11-25-85
Vol. 50 No. 227
Pages 48371-48548

Federal Register

Monday
November 25, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA, see announcement on the inside cover of this issue.

Selected Subjects

Antibiotics
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Government Procurement
General Services Administration

Indians
Interior Department

Loan Programs—Housing and Community Development
Veterans Administration

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Medicare
Health Care Financing Administration

Natural Gas
Energy Department

Securities
Securities and Exchange Commission

Wages
Personnel Management Office

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

Contents

Federal Register
Vol. 50, No. 227
Monday, November 25, 1985

Separate Parts in This Issue

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

Proposed Rules:

550 48421

7 CFR

982 48371
1944 48372

Proposed Rules:

978 48422

12 CFR

Ch. VIII 48372

14 CFR

39 (2 documents) 48375, 48376
71 48378

17 CFR

200 48379
210 48379
230 48379
239 48379
240 48379

18 CFR

Proposed Rules:

271 48540

19 CFR

Proposed Rules:

175 48430

21 CFR

430 48396
436 48396
442 48396

23 CFR

Proposed Rules:

658 48431

33 CFR

100 48402
165 (3 documents) 48403, 48404

Proposed Rules:

165 48434

38 CFR

36 48405

40 CFR

271 48406

42 CFR

Proposed Rules:

405 48435

43 CFR

Proposed Rules:

4 (2 documents) 48445, 48446

47 CFR

31 48408
33 48408
42 48408
43 48408

Proposed Rules:

73 48446

48 CFR

Proposed Rules:

532 48447
552 48447

49 CFR

171 48419
172 48419
173 48419
175 48419

Rules and Regulations

Federal Register
Vol. 50, No. 227
Monday, November 25, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Inshell Trade Demand for the 1985–86 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes an inshell trade demand for domestic filberts for the 1985–86 marketing year, which began July 1, 1985. This inshell trade demand would be used in computing volume regulation percentages necessary to promote orderly marketing for filberts during that year and is based on a recommendation of the Filbert/Hazelnut Marketing Board which works with the USDA in administering the filbert/hazelnut marketing order program.

DATE: Effective July 1, 1985, to June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator, of the Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules proposed under the Agricultural Marketing Agreement Act are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This rule establishes an inshell trade demand for domestic filberts for the 1985–86 marketing year, to be used in computing volume regulation percentages to promote orderly marketing for filberts during that year.

It is estimated that approximately 14 handlers of filberts/hazelnuts will be subject to regulation under the marketing order for filberts/hazelnuts grown in Oregon and Washington during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden on small entities if present at all is not significant.

It is found that good cause exists for not postponing the effective time of the establishment of the inshell trade demand until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Growers and handlers have been conducting their operations in anticipation of the establishment of the trade demand and prompt implementation is necessary to dispel any uncertainties as to the trade demand for the 1985–86 marketing year; and (2) no useful purpose would be served by delaying the effective date of this action.

This action establishes an inshell filbert trade demand of 5,000 tons for the 1985–86 marketing year. The establishment of the trade demand is pursuant to § 982.40 of the marketing agreement and Order No. 982, both as amended (7 CFR Part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The inshell trade demand was recommended by the Filbert/Hazelnut Marketing Board.

On October 2, 1985, notice was published in the **Federal Register** (50 FR 40200), inviting written comments on the proposed establishment of an inshell trade demand of 5,000 tons. None was received.

Section 982.40(b) of the order provides that prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. If the Secretary finds on the basis of the Board's recommendation or other information that volume regulation for merchantable filberts for that marketing year would tend to effectuate the declared policy of the act, the Secretary is required to establish that inshell trade demand.

For the 1985–86 marketing year, the Board recommended an inshell trade demand of 5,000 tons pursuant to § 982.40(b). That trade demand is based on an average of domestic inshell shipments during the 1982–83, 1983–84 and 1984–85 marketing years of 4,546 tons. The Board increased that quantity by 10 percent for market expansion. Later, the Board plans to modify its marketing policy to make a carryout available for early shipments next season.

The USDA forecast of 1985 filbert production in Oregon and Washington is a record high 24,000 tons, far in excess of the Board's trade demand recommendation of 5,000 tons. Thus, volume regulation for the 1985–86 marketing year will be necessary to promote stable marketing conditions and an inshell trade demand must be established for that season.

Under § 982.40(c), the inshell trade demand is used in the computation of a preliminary free and restricted and final free and restricted percentages. On November 14, the Board met and recommended to the Secretary final free and restricted percentages to release 100 percent of the 1985–86 inshell trade demand.

The free percentage portion of the 1985 production would be available for use in all outlets, but primarily in the domestic inshell market. Inshell filberts] withheld from handling (i.e., restricted filberts may be shelled for domestic or foreign shipment, exported, or disposed

of in outlets which are noncompetitive with normal outlets for inshell filberts.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is further found that the inshell trade demand of 5,000 tons hereinafter set forth will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 982:

Agricultural Marketing Service, Marketing Agreement and Order, Filberts, Hazelnuts, Oregon and Washington.

PART 982—[AMENDED]

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 982.234 is deleted and a new § 982.235 is added to read as follows: (The following section will not be published in the Code of Federal Regulations).

§ 982.235 Trade demand and free and restricted percentages—1985–86 marketing year.

(a) The trade demand for merchantable inshell filberts/hazelnuts for the 1985–86 marketing year shall be 5,000 tons.

(b) [Reserved.]

Dated: November 20, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–28093 Filed 11–22–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration.

ACTION: Interim rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects an interim rule published October 1, 1985 (50 FR 39959). In the revision to FmHA's regulation regarding section 502 rural housing loans published on October 1, 1985, the meaning of a subsequent paragraph was inadvertently distorted by the revision of § 1944.34(f)(1)(i). The intent of this action is to correct this error by amending § 1944.34(f)(5) to restore the integrity of the reference to § 1944.34(f)(1).

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ruth Corcoran, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. Telephone: (202) 382–1488.

SUPPLEMENTARY INFORMATION: FmHA grants interest credit subsidy at loan closing for section 502 rural housing loans to applicants whose adjusted annual incomes at the time of loan approval did not exceed the applicable low- or very low-income eligibility limits. In the October 1, 1985, revision of Subpart A of Part 1944, clarification of policy concerning eligibility for interest credit at loan closing in one paragraph inadvertently distorted conditions for granting interest credit on existing loans in a subsequent paragraph due to a cross reference. The following correction is made in FR Doc. 85–22586 appearing on pages 39959 to 39967 in the issue of October 1, 1985.

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.34 [Corrected]

2. In § 1944.34, paragraph (f)(5)(iii) is redesignated as (f)(5)(iv), paragraph (f)(5)(i) is revised, and new paragraph (f)(5)(iii) is added to read as follows:

§ 1944.34 Interest credit.

* * * * *

(f) * * *

(5) * * *

(i) The requirements of paragraph (f)(1)(ii), (iii), (iv) and (v) of this section are met.

* * * * *

(iii) The borrower's adjusted annual income does not exceed the low-income limit in Exhibit C of this subpart (available in any FmHA office).

* * * * *

Dated: October 31, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85–28095 Filed 11–22–85; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Repurchase Agreements of Depository Institutions with Securities Dealers and Others; Interpretive Ruling and Policy Statement Number 85–2

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 85–2.

SUMMARY: The NCUA Board has adopted as its statement of general policy for Federal credit unions the Federal Financial Institutions Examination Council ("FFIEC") Supervisory Policy entitled "Repurchase Agreements of Depository Institutions with Securities Dealers and Others."

EFFECTIVE DATE: November 14, 1985.

FOR FURTHER INFORMATION CONTACT: Donald W. Sorrels, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, NCUA, 1776 G Street, NW., Washington, DC 20456, or telephone (202) 357–1065 (Mr. Sorrels) or (202) 357–1030 (Mr. Bisker).

SUPPLEMENTARY INFORMATION: On October 21, 1985, the FFIEC approved a recommendation to each of the participating Federal financial institution regulatory agencies to adopt its Supervisory Policy entitled "Repurchase Agreements of Depository Institutions with Securities Dealers and Others." The NCUA Board, at its November 14, 1985, meeting, adopted the Supervisory Policy as its general policy for Federal credit unions. For the most part, the Supervisory Policy elaborates on what is already required of FCU's under NCUA's Rules and Regulations, Part 703—Investment and Deposit Activities. The Supervisory Policy sets out guidelines which are recognized to be safe and sound practices when engaging in repurchase and reverse repurchase transactions. FCU's involved in these transactions should follow the guidelines.

Federal Financial Institutions Examination Council Supervisory Policy

Repurchase Agreements of Depository Institutions With Securities Dealers and Others

Purpose

Depository institutions and others involved with the purchase of United States Government and Agency obligations under agreements to resell

(reverse repurchase agreement),[1] have sometimes incurred significant losses. The most important factors causing these heavy losses have been inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions.[2]

The following minimum guidelines address the need for managing credit risk exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions, and should be followed by depository institutions that enter into repurchase agreements with securities dealers and others.

Depository institutions that actively engage in repurchase agreements are encouraged to have more comprehensive policies and controls to suit their particular circumstances. The examining staffs of the Federal bank, thrift and credit union supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy in light of these minimum guidelines and the scope of each depository's operations.

I. Credit Policy Guidelines

The apparent safety of short-term repurchase agreements which are collateralized by highly liquid, U.S. Government and Federal agency obligations has contributed to an attitude of complacency. Some portfolio managers have underestimated the credit risk associated with the performance of the counterparty to the transaction, and have not taken adequate steps to assure control of the securities covered by the agreement.

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. At a minimum, those policies and procedures should cover the following:

A. *Written policies* should establish "know your counterparty" principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is a dealer in the underlying securities. Some firms which deal in the markets for U.S. Government and Federal agency securities are subsidiaries of, or related to, financially stronger and better known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express guarantee, the stronger firm's financial position cannot be relied upon in assessing the creditworthiness of a counterparty.

It is important to know the legal entity that is the actual counterparty to each repurchase agreement transaction. A depository institution should know about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations depository institutions may use, or serve as, brokers or finders in order to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent the names of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

B. *Dealings with unregulated securities dealers.* A dealer in U.S. Government and Federal agency obligations is not necessarily a Federally insured bank or thrift, or a broker/dealer registered with the Securities and Exchange Commission. Therefore, the dealer firm may not be subject to any Federal regulatory oversight.

A depository institution doing business with an unregulated securities dealer should be certain that the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guideline, which currently calls for liquid capital to exceed measured risk by 20 percent (that is, the ratio of a dealer's liquid capital to risk of 1.2:1). This ratio can be calculated by a dealer using either the Securities and Exchange Commission's Net Capital Rule for Brokers and Dealers (Rule 15c3–1) or the Federal Reserve Bank of New York's Capital Adequacy Guidelines for United States Government Securities Dealers. To ensure that an unregulated dealer complies with either of those capital standards, it should certify its compliance with the capital standard and provide the following three forms of certification:

(1) A letter of certification from the dealer that the dealer will adhere on a continuous basis to the capital adequacy standard;

(2) audited financial statements which demonstrate that as of the audit date the dealer was in compliance with the standard and the amount of liquid capital; and

(3) a copy of a letter from the firm's certified public accountant stating that it found no material weaknesses in the dealer's internal systems and controls incident to adherence to the standard.[3]

C. *Periodic evaluations* of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Prior to engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings (if any) from its counterparties, and should insist that similar information be provided on a periodic and timely basis in the future. Recent failures of government securities dealers have typically been foreshadowed by delays in producing these statements. Many firms are registered with the Securities and Exchange Commission as broker/dealers and have to file financial statements and should be willing to provide a copy of these filings.

The counterparty credit analysis should consider the financial statements of the entity that is to be the depository institution's counterparty as well as those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of is financial condition. As part of this analysis, the depository institution should make inquiry about the counterparty's general reputation and whether there have been any formal enforcement actions against the

[1] In order to avoid confusion among market participants who sometimes use the same term to describe different sides of the same transaction, the term "repurchase agreement" will be used in the balance of this statement to refer to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities acquires funds by transferring the securities to another party under an agreement to repurchase the securities at an agreed upon future date. A reverse repurchase (resale) agreement is one in which a party provides funds by acquiring securities pursuant to an agreement to resell them at an agreed upon future date.

[2] Throughout this document repurchase agreements are generally discussed in terms of secured credit transactions. This usage should not be deemed to be based upon a legal determination.

[3] This letter should be similar to that which must be given to the SEC by registered broker/dealers.

counterparty or its affiliates by State or Federal securities regulators.

D. *Maximum position* and temporary exposure limits for each approved counterparty should be established based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

Individual repurchase agreement counterparty limits should consider overall exposure to the same or related counterparty throughout the depository institution. Repurchase agreement counterparty limitations should include the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

E. *Lending Limitations.* Federally-chartered savings institutions and Federal credit unions are subject to all Federal regulations in this area. State-chartered banks or savings institutions should consult with their counsel and/or state banking or thrift authorities as to the applicability of state lending restrictions to repurchase transactions.

Except as otherwise provided in applicable agency regulations and State law, it should be assumed that unless the depository institution's interest in securities held as collateral under a repurchase agreement is assured, a repurchase agreement transaction with any single counterparty will be subject to the lending limitations applicable to that institution. Conversely, the market value of securities sold under a repurchase agreement in excess of the amount of proceeds received by the depository institution could be viewed as an unsecured extension of credit to the repurchase agreement counterparty subject to the depository institution's lending limits.

The application of lending limitations on loans by national banks to certain types of repurchase transactions is currently under review by the Comptroller of the Currency. Until this review is completed, national banks as a matter of prudent banking should treat repurchase agreements as if they are subject to the lending limit unless the bank has control of the underlying securities.

II. Guidelines for Controlling Repurchase Agreement Collateral

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution negotiates written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis. If prudent management control requirements of repurchase agreements are too burdensome for a depository institution, other asset/liability management tools should be used.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid Government securities. However, experience has shown that the collateral securities will probably *not* serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see "C. Control of Securities," page 6). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. Management should obtain a written legal opinion as to the adequacy of the procedures utilized to establish and protect the depository institution's interest in the underlying collateral.

General Requirements

A. *A written agreement* specific to a repurchase agreement transaction or master agreement governing all repurchase agreement transactions should be entered into with each counterparty. The written agreement should specify all the terms of the transaction and the duties of both the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. The repurchase and custodial agreements should specify, but should not be limited to, the following:

- Acceptable types and maturities of collateral securities;
- Initial acceptable margin for collateral securities of various types and maturities;
- Margin maintenance, call, default and sellout provisions;
- Rights to interest and principal payments;
- Rights to substitute collateral; and
- The persons authorized to transact business on behalf of the depository institution and its counterparty.

B. *Confirmations.* Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. The confirmation should identify specific collateral securities.

C. *Control of Securities.* As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law and accordingly should be undertaken with the advice of counsel. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve Bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve Bank for the District in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of book entry securities, making appropriate entries in the books of a third party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of a third party custodian acting pursuant to a tripartite agreement with the depository institution and the counterparty, ensuring adequate segregation and identification of either physical or book-entry securities.

Where control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of the insolvent counterparty. In such instance, *substantial losses are likely to be incurred.* Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed: (1) It is completely satisfied as to the creditworthiness of the counterparty; (2) the transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty; (3) periodic credit evaluations of the counterparty are

conducted; and (4) the depository institution has ascertained that collateral segregation procedures of the counterparty are adequate. Unless prudential internal procedures of these types are instituted and observed, the depository institution may be cited by its financial supervisory agency for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third party deliveries should be confirmed in writing directly by the custodian. It is not acceptable to receive confirmation from the counterparty that the securities are segregated in a depository institution's name with a custodian; the depository institution should, however, obtain a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, payment for securities should not be made until the securities are actually delivered to the depository institution or its agent. The custodial contract should provide that the custodian takes delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third party custodian. Any substitution of securities should take into consideration the following discussion of "margin requirements."

D. *Margin Requirements.* The amount paid by a depository institution under the repurchase agreement should be less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. Factors to be considered in establishing an appropriate margin include the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements of U.S. Government and Federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures should require daily market-to-market of repurchase agreement securities to the bid side of the market. Repurchase agreements should provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. *Prudent management* procedures should be followed in the administration of any repurchase agreement. Longer term repurchase agreements require management's daily attention to the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values and adjusting collateral margin may be regarded as a unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

F. *Overcollateralization.* A depository institution should use current market values, including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract should provide that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as a unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

By the National Credit Union Administration Board on November 14, 1985.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-28049 Filed 11-22-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-20; Amdt. 39-5164]

Airworthiness Directives; Sikorsky Aircraft Model S-76A Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Sikorsky Model S-76A helicopters by individual letters. The AD requires inspection and replacement of certain tail rotor drive shaft bearings which may have been installed without lubricant. The AD is needed to prevent failure of critical tail rotor drive shaft bearings which could result in possible loss of directional control of the helicopter.

DATES: Effective November 25, 1985, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 85-15-06, issued July 30, 1985, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1985.

Compliance: Required before further flight after the effective date of the AD, unless already accomplished.

ADDRESSES: The applicable alert service bulletin may be obtained from Mr. R.E. Warren, Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of the alert service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest

Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE-153, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: On July 30, 1985, priority letter AD No. 85-15-06 was issued and made effective immediately as to all known U.S. owners and operators of certain Sikorsky Model S-76A helicopters. The AD required inspection and replacement of certain tail rotor drive shaft bearings which may have been installed without lubricant. AD action was necessary to prevent failure of critical tail rotor drive shaft bearings which could result in possible loss of directional control.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letter, issued July 30, 1985, to all known U.S. owners and operators of certain Sikorsky Model S-76A helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** to make it effective as to all persons. Paragraphs were added to the AD to allow ferry flight and alternate means of compliance.

Conclusion: This regulation could impose an estimated maximum cost of $222 per aircraft for bearing replacement. It is estimated that 25 aircraft may require bearing replacement. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Sikorsky Model S-76A helicopters certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent failure of certain tail rotor drive shaft bearings which may have been installed without lubricant, accomplish the following in accordance with Sikorsky Aircraft Alert Service Bulletin (ASB) 76-66-20, paragraph E.1, dated July 25, 1985.

(a) Remove all Part Number (P/N) SB1138-101 bearings manufactured by MRC not identified with either a white dot on the grease fitting or a serial number and with under 100 hours' operating time.

(b) Replace removed bearings with MRC P/N SB1138-101 bearings identified with either a white dot on the grease fitting or a serial number or both, or with the alternate bearing manufactured by Fafnir and approved for this installation.

(c) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, ANE-150, 12 New England Executive Park, Burlington, Massachusetts 01803. Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, ANE-150, may adjust the compliance time specified in this AD.

Sikorsky Aircraft ASB 76-66-20 is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Mr. R.E. Warren, Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. These documents also may be examined at the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective November 25, 1985, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 85-15-06, issued July 30, 1985, which contained this amendment.

Issued in Fort Worth, Texas, on October 22, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-27966 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-ANE-4; Amdt. 39-5168]

Airworthiness Directives; Pratt & Whitney Aircraft (PWA) JT8D-15, -17, and -17R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action publishes in the **Federal Register**, amends, and makes effective to all persons a new airworthiness directive (AD) which was previously issued to all known U.S. owners and operators of certain JT8D-15, -17 and -17R turbofan engines by individual telegram. The telegraphic airworthiness directive (TAD) is being amended to require inspection, repair and modification of disks which have not had previous airseal groove repair. In addition, this AD supersedes AD 84-16-03. This AD requires inspection of the airseal snap diameter on second stage turbine disks for wear, cracking, and a properly sized fillet radius. This AD also requires tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts. This AD is needed to prevent excessive movement between the disk and airseal mating surfaces which could result in high amplitude stresses that could be aggravated by undersize fillet radii in the airseal groove of the disk and ultimately cause an uncontained failure of the second stage turbine disk.

DATES: (a) For those provisions of this AD which apply to unrepaired disks, the effective date is December 26, 1985;

(b) for the remaining provisions of this AD, the effective date is December 26, 1985, to all persons except to those persons to whom they were made immediately effective by individual telegrams, issued September 25, 1985.

Compliance schedue—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on December 26, 1985.

Comments for inclusion in the docket must be received on or before December 26, 1985.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-ANE-4, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in

duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 84–ANE–4.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room No. 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletins (SBs) may be obtained from Pratt & Whitney Aircraft, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SBs is contained in Rules Docket No. 84–ANE–4, in the Office of the Regional Counsel, New England Region, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: The FAA has determined that second stage turbine disks and third stage turbine inner airseals that are assembled with an insufficient diametral interference fit can become loose during certain engine operating conditions, resulting in relative motion between the disk and airseal. This movement can cause the mating surfaces to wear after extended operation. Wear at the bottom of the disk airseal groove can reduce fatigue strength, and relative motion between the disk and the airseal can allow a high amplitude disk stress to occur within the engine operating range. The combination of reduced disk strength and increased vibratory stress can result in disk cracking and eventual failure. The failure can also be accelerated by stress concentrations introduced during repair of the disk airseal groove if the fillet radii are improperly machined undersize.

Amendment 39–4897, AD 84–16–03, amending Part 39 of the Federal Aviation Regulations (FAR) was published in the **Federal Register** on September 25, 1984 (49 FR 37568), requiring inspection and modification of second stage turbine disks on PWA JT8D–15, –17, and –17R turbofan engines.

Since the issuance of AD 84–16–03, three additional uncontained second stage turbine disk failures have occurred making a total of seven failures. Two of the additional failed disks had previously been improperly repaired and had undersize fillet radii in the airseal groove. The third failed disk had not been repaired but failed from severe wear in the airseal groove and snap diameter. The FAA has determined that the compliance intervals of the original Ad are not sufficiently restrictive to preclude additional uncontained disk failures.

On September 25, 1985, TAD T85–19–51 was issued to supplement AD 84–16–03 and require a more restrictive compliance schedule for inspection of disks which had previously been repaired in the airseal groove.

Since these conditions are likely to exist or develop on other engines of the same type design, Amendment 39–4897 (49 FR 37568), AD 84–16–03, is being superseded by a new AD which incorporates a more restrictive compliance schedule for unrepaired disks and incorporates TAD T85–19–51 for repaired disks. This AD requires inspection of the second stage turbine disk assemblies which will detect wear and cracking of the snap diameter and at the bottom of the disk airseal groove in accordance with the Accomplishment Instructions (paragraph 2) of PWA Alert SB 5541, Revision 1, dated May 4, 1984. The AD also provides repair instructions for the disk and modification instructions for the mating third stage airseal which will tighten the disk to airseal diametrical fit and will prevent future wear, in accordance with PWA SB 5510, Revision 1, dated February 13, 1984.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended further in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84–ANE–4". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this amendment involves 236 PWA JT8D engines (28 with previously repaired disk airseal grooves and 208 without repaired disk airseal grooves). The approximate total cost of removal, inspection, modification and overhaul is $39 million, and approximately 1,312 lost revenue aircraft days are anticipated at an average of $25,000 per day for an additional $33 million. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 737, Boeing 727, and Douglas DC–9 aircraft in which the JT8D–15, –17, and –17R engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1359(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Amendment 39-4897, AD 84-16-03, as follows:

Pratt & Whitney Aircraft. Applies to Pratt & Whitney Aircraft JT8D-15, -17, and -17R turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the second stage turbine disk, inspect second stage turbine disk, Part Numbers 676802, 770602, 780502, 786802, and 787302 details, and Part Numbers 676822, 769722, 769832, 786822, and 787232 assemblies for wear and cracking of the snap diameter and at the bottom of the disk airseal groove, repair the disk, and modify the mating third stage turbine inner airseal in accordance with the Accomplishment Instructions (Paragraph 2) of PWA Alert SB 5541, Revision 1, dated May 4, 1984, and PWA SB 5510, Revision 1, dated February 13, 1984, or FAA approved equivalents, per the following schedule:

(a) For disks which have not had the airseal groove previously repaired:

(1) With 14,000 hours or more time in service since new—inspect, repair and modify prior to reaching 17,000 hours time in service since new or within the next 2,000 hours time in service, whichever occurs first.

(2) With less than 14,000 hours time in service since new—inspect, repair and modify by 14,000 hours time in service since new or within the next 2,000 hours time in service, whichever occurs later.

(b) For disks which have had the airseal groove previously repaired:

(1) With 2,000 hours or more time in service since repair—inspect, repair and modify within the next 400 hours time in service.

(2) With less than 2,000 hours time in service since repair, inspect, repair and modify by 2,000 hours time in service since repair or within the next 400 hours time in service, whichever occurs later.

Disks worn beyond the repair limits of the applicable SBs must be removed from service.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of an owner or operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedule specified in this AD.

PWA SB Number 5510, Revision 1, dated February 13, 1984, and the Accomplishment Instructions of (Paragraph 2) PWA Alert SB 5541, Revision 1, dated May 4, 1984, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney Aircraft Group, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. These documents also may be examined at the Office of Regional Counsel, New England Region, FAA, Room No. 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment supersedes Amendment 39-4879 (49 FR 37568) AD 84-16-03.

Those provisions of this amendment which apply to unrepaired disks become effective on December 26, 1985.

The remaining provisions of this amendment become effective December 26, 1986, except to those persons to whom they were made immediately effective by individual telegrams issued September 25, 1985.

Issued in Burlington, Massachusetts, on October 31, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-27968 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 85-ASO-13]

Designation of Transition Area, Metter, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Metter, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operations at Metter Municipal Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Metter Nondirectional Radio Beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 GMT, January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Metter, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Metter Municipal Airport (49 FR 37541). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Metter, Georgia, transition area and lowers the base of controlled airspace in the vicinity of Metter Municipal Airport from 1,200 to 700 feet above the surface.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Metter, GA—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Metter Municipal Airport (Lat. 32°22'30"N., Long. 82°04'45"W.); within 3 miles each side of the 283° bearing from the Metter RBN (Lat. 32°22'20"N., Long. 82°05'03"W.), extending from the 6.5-mile radius area to 8.5 miles west of the RBN.

Issued in East Point, Georgia, on November 12, 1985.

William H. Pollard,

Deputy Director, Southern Region.

[FR Doc. 85-27967 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 210, 230, 239, and 240

[Release No. 33-6611; IC-14796; S7-12-85]

Business Combination Transactions; New Registration Form for Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form, rule and rule amendments.

SUMMARY: The Commission is adopting Form N-14 for the registration of securities issued by investment companies in business combination transactions. The form is required for management investment companies and business development companies registering securities issued in those types of transactions. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a shorter and more meaningful format. Related technical amendments are being adopted to conform various provisions of Regulation S-X and the proxy rules to Form N-14. The Commission also is adopting a new rule which will permit the Form N-14 registration statement to become effective automatically on the thirtieth day after the date of filing in the case of open-end management investment companies.

DATES:

Effective Date: Form N-14 and the related rule and rule amendments are effective February 1, 1986, for all documents filed on or after that date.

Compliance Date: Registrants will be permitted, however, to use Form N-14 and the other provisions amended or adopted herein in filings made after publication of this release in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mary S. Podesta, Chief of Office, or Stephen C. Beach, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272-2107.

SUPPLEMENTARY INFORMATION: The Commission is adopting Form N-14 for the registration of securities issued by investment companies in exchange offers and business combination transactions under Rule 145 [17 CFR 230.145] of the Securities Act of 1933 ("Securities Act"). The form, new rule and rule amendments were proposed for comment on March 18, 1985.[1] After considering the comments received, the Commission has determined to adopt the form and rule change substantially as proposed.

Form N-14 will replace Form S-14 for registering securities to be issued in investment company business combination transactions. Form S-14 is being rescinded.[2] Form N-14 also may serve as the proxy or information statement for the business combination transaction required under applicable rules of the Securities Exchange Act of 1934 ("Exchange Act"). Accordingly, technical amendments to rules under Regulation 14A [17 CFR 240.14a-1 to 14a-101], and Regulation 14C [17 CFR 210.1-10 to 210.12-29] are being adopted to indicate that compliance with the disclosure requirements of Form N-14 will satisfy the requirements of those rules. In the instructions to Form N-14, the Commission also is making clear that the Form N-14 information requirements would be in lieu of the information required under the Investment Company Act proxy rules [17 CFR 270.20a-1 through 20a-3] with respect to the business combination transaction. The instructions will make clear, however, that where a separate proxy submission accompanies the merger proxy, for example a submission with respect to action to be taken with respect to the election of directors of the investment company or with respect to an investment advisory contract, that submission must comply with applicable information requirements under the Exchange Act and the Investment Company Act. A new rule also is being adopted to permit filings on Form N-14 by open-end management investment companies to become effective automatically on the thirtieth day after the date of filing. The Commission is adopting an amendment to its Rules of Organization and Program Management delegating to the Director of the Division of Investment Management the authority to declare registration statements effective under the rule and to suspend effectiveness when necessary.

I. Purpose of Form N-14

Currently, investment companies proposing to engage in business combination transactions must comply with the disclosure requirements of Form S-14.[3] One result of the information requirements of Form S-14 is that prospectuses for investment company business combination transactions are frequently long and complex. Form N-14 continues the Commission's effort to simplify and make more understandable business combination prospectuses by applying the approach to prospectus simplification used by the Commission in Form N-1A and Form N-3, the registration forms for open-end management investment companies, and in Form S-4, the registration form for business combination transactions of other issuers.[4]

Form N-14 is divided into three parts. Part A is the statutory prospectus and consists of essential information about the transaction, the companies and voting information. Part B, the Statement of Additional Information, consists of additional information about the companies involved in the transaction, and historical and pro forma financial statements which may be of interest to at least some investors. Part B need not be included in the prospectus (provided certain conditions are met) but must be

[1] Securities Act Release No. 6570 (March 18, 1985) [50 FR 11725 (March 25, 1985)].

[2] Form S-14 was replaced by Form S-4 for registering securities in connection with business combination transactions of other types of issuers. Form S-4 was adopted by the Commission on April 23, 1985. Securities Act Release No. 6578 (April 23, 1985) [50 FR 18990 (May 6, 1985)].

[3] Currently, an open-end management investment company may register securities offered in a transaction subject to Securities Act Rule 145 as a post-effective amendment to its Form N-1A registration statement, if the amendment contains the information required by Form S-14. *See* Securities Act Release No. 5510 (July 3, 1974) [39 FR 26719 (July 23, 1974)]. If an investment company chooses to file a post-effective amendment, it may designate shares previously registered for the transaction. Form N-14 now becomes the exclusive form for registering shares to be sold in business combination transactions. Investment company registrants that have previously registered an indefinite number of shares may, however, sell those shares by means of the prospectus included in the Form N-14 registration statement. *See* General Instruction B to Form N-14.

[4] Form N-1A was adopted in Investment Company Act Release No. 13436 (August 12, 1983) [48 FR 37928 (August 22, 1983)]; Form N-3 was adopted in Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 36145 (June 25, 1985)]; and Form S-4 was adopted in Securities Act Release No. 6578 (April 23, 1985) [50 FR 18990 (May 6, 1985)].

made available to investors upon request. Part C consists of information required to be in the registration statement but not required to be delivered to investors. The requirements for a Part A statutory prospectus and a Part B Statement of Additional Information are consistent with the disclosure requirements of Form N–1A and Form N–3. In adopting those forms, the Commission determined to improve the quality of disclosure provided to investors by requiring in the prospectus pertinent information about the issuer while making additional information, not of routine interest to most investors, available upon request. Form N–14 also is consistent with Form S–4 which the Commission recently adopted for business combination transactions by other issuers. Both Form S–4 and Form N–14 reflect the premise that investment decisions made in the context of a business combination and those made when purchasing a security in a primary offering are substantially similar in terms of an investor's information needs.

II. Discussion of Comments

The Commission received six comment letters on the proposing release. Commentators acknowledged that Form N–14 represented an improvement over existing requirements although commentators offered a number of specific comments and suggestions on the proposed form. At the same time, several commentators argued that a separate registration form (such as Form S–14, currently required, and proposed Form N–14) should not be required for investment companies entering into business combination transactions. The discussion below is in two parts. The first part discusses the commentators' major substantive comments and the changes, if any, made in the form and rules to address commentators' concerns. The second part of the release addresses specific recommendations and suggestions made by the commentators and indicates where changes in the form have been made as a result of these comments.

A. Separate Registration Form

Four commentators urged the Commission to eliminate the requirement for a separate Securities Act registration form for the securities issued by an investment company in a business combination transaction. These commentators suggested that the shareholders of an acquired investment company need only receive the acquiring company's existing prospectus and a proxy statement containing information concerning the transaction and the differences between the two funds.

Generally, Rule 145 [5] under the Securities Act states that an "offer" or "sale" within the meaning of the Securities Act is made to the security holders of a corporation where, pursuant to statutory provisions, controlling instruments or otherwise, they are asked to vote or consent to a plan or agreement for: (i) Reclassification other than stock splits and changes in par value; (ii) mergers, consolidations and similar plans of acquisition except where the sole purpose of the transaction is to change an issuer's domicile; and (iii) certain transfers of assets for securities where there is a subsequent distribution of the securities to those voting on the transfer of the assets. The effect of Rule 145 is to subject these business combination transactions to the Securities Act registration requirements. Securities Act Release No. 5510 made clear that Rule 145 applies to mutual fund combinations, specifying that the acquiring fund may use a new registration statement or a post-effective amendment to its current registration statement disclosing all the information required by Form S–14. [6] Form N–14 implements these registration requirements as the required registration statement form for business combinations of investment companies.

Commentators argued that the investment decision made by a shareholder of an investment company involved in a business combination transaction is basically whether to invest in a larger version of the acquiring company. They asserted that this decision is comparable to other shareholder decisions such as approval of a change in the fund's investment policy or its investment adviser and should not require the filing of a separate registration form with the attendant cost and time delay.

As the preliminary note to Rule 145 states, the trust of the rule is that an "offer," "offer to sell," "offer for sale" or "sale" occurs when a plan or agreement is submitted to security holders under which they must elect, on the basis of what is in substance a new investment decision, whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that these transactions are subject to the registration requirements of the Securities Act. The Commission continues to believe that shareholders should have the protection of the Securities Act in the information which they receive about investment company business combinations and, accordingly, it is adopting Form N–14 as the required registration form for securities issued in those transactions. While a separate registration form is required, Form N–14 has been designed so that a fund can develop a short disclosure document about the transaction attached to the fund's current prospectus for delivery to shareholders. To further reduce cost and delay to registrants, new Rule 488 will permit registration statements filed on Form N–14 to become effective automatically after 30 days.

B. Pro Forma Financial Information

The financial information requirements of Form N–14 as proposed placed most financial information in the Statement of Additional Information. That is, the prospectus would contain only the per share table of both companies and the table of existing and pro forma capitalization while historical financial statements of the two companies and pro forma combining financial statements required by Regulations S–X would be made available on request.

The Commission specifically requested comment on whether pro forma and historical financial statements should be required in the prospectus rather than the Statement of Additional Information. Two commentators believed that pro forma financial information is not material to investors and recommended that this information be eliminated entirely or replaced by a much shorter presentation. These commentators argued that the cost of preparing pro forma financial information outweighed any benefit the information provided to investors. As an alternative to the prospectus containing either a pro forma capitalization table or pro forma combined financials, one commentator suggested that Form N–14 require that the prospectus include a table that shows actual and pro forma expense ratios. Another commentator recommended, as an alternative to pro forma financials in either the prospectus or Statement of Additional Information, that separate schedules of investments of the two funds be made available upon request so that the information could be provided as of a more current date and at less cost than pro forma information.

The Commission has determined to adopt the pro forma and historical financial information requirements as

[5] Rule 145 was adopted by the Commission in Securities Act Release No. 5316 (October 6, 1972) [37 FR 23631 (November 7, 1972)].

[6] Securities Act Release No. 5510 (July 3, 1974) [39 FR 26719 (July 23, 1974)].

proposed. The Commission continues to believe that pro forma financial statements present information about the two companies in a manner which permits comparison of the two funds, including their portfolios, that enables investors to assess whether the two funds to be merged are similar in terms of their actual investments and shows the extent the two portfolios "mesh" or fit together. Historical financial information may be useful because it presents audited information about the funds over a longer period of time.

In Form N–14 as adopted, pro forma financial statements are required in the Statement of Additional Information rather than in the prospectus provided the requirements specified in Instruction F for making information available on request are met. This follows the approach of Form N–1A and differs from that of Form S–4 where Regulation S–X pro forma financial statements are required in the prospectus.

In addition, the form contains an exception to the requirement that pro forma financial statements be included in the registration statement. As discussed in the proposing release, some investment company mergers involve the acquisition of a company which is much smaller in size than the acquiring company. The larger company may acquire a private, personal holding company or a registered investment company which has proven to be too small to operate economically. Preparation of the pro forma combined financial statements does not, in such circumstances, appear to provide significant assistance to shareholders, but can add more significant costs to the companies involved. Item 14 of Form N–14 as proposed and adopted would not require pro forma financial statements if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value as of a specified date within thirty days of the filing of Form N–14. The exception is modeled after the definition of significant subsidiary in Rule 1–02 of Regulation S–X [17 CFR 210.1–02] except that the determination would be based only on asset sizes. The Commission considered the exception in Item 14 in light of the criticism of the requirement for pro forma financial statements. The Commission continues to believe that the ten percent exception, which likely will be available in many investment company mergers, will eliminate the need for pro forma financials where their inclusion in the registration statement would not appear to provide significant assistance to shareholders and could add significant costs to the companies involved.

Rule 488

The Commission also proposed new Rule 488 under the Securities Act to permit, under certain conditions, registration statements on Form N–14 filed by open-end management investment companies to become effective automatically on the sixtieth day after the date of filing. As proposed, Rule 488 would be available if the prospectus filed as part of the registration statement did not contain disclosures relating to any other proposal to be acted on at a meeting of shareholders of either party other than proposals related to: (i) An exchange offer for the securities of another person; (ii) a business combination transaction under Rule 145(a); or (iii) proposals related to the exchange offer or business combination transaction.

Two commentators noted that time can be a critical factor in mutual fund business combination transactions because, during the period following announcement of the transaction, the acquired fund's assets can decrease significantly through redemptions. Commentators suggested that shorter periods varying from 10 to 30 days be provided. These commentators also viewed the conditions that the prospectus contain only proposals relating to the business combination transaction as too restrictive and requested that this condition be eliminated or clarified to allow disclosures relating to routine matters generally submitted to shareholders as part of their annual meeting. In response to these comments, the Commission is shortening the period under new Rule 488 for automatic effectiveness to 30 days and allowing disclosures relating to specified routine matters generally submitted to shareholders as part of their annual meeting.

III. Specific Comments

A. President's Letter

Two commentators noted that proxy materials for investment companies typically begin with a so-called President's Letter which concisely summarizes the proposed transaction. These commentators asked that the adopting release or instructions to the form make clear that this letter may continue to be used as the initial or introductory document. The instructions to the form have been amended to do so.

B. Advisers' Balance Sheets

Several commentators objected to Item 14(b) of Form N–14 as proposed which would require audited balance sheets of the investment advisers to both the registrant and the company being acquired. Form N–1A does not require an audited balance sheet of the adviser in either the prospectus or Statement of Additional Information, although adviser balance sheets are required by Rule 20a–2 under the Investment Company Act in connection with a shareholder vote to elect fund directors or take action with respect to the investment advisory contract. One commentator argued that, since the adviser's balance sheet is not necessary in connection with an initial investment decision, balance sheets of both advisers should not be necessary in connection with an investment decision at a time when two funds are combined. Because Form N–14 is designed to provide investors in an investment company business combination transaction with information comparable to that required by Form N–1A for primary offerings, the Commission is deleting the requirement to include the balance sheets of both advisers.

C. SAI Delivery Requirements

General Instruction F to Form N–14 requires that Part B be sent within one business day of the receipt of a request for it. According to one commentator, the one day response requirement could be difficult to meet, especially in the early stages of the proxy solicitation process when the demand for Part B should be the greatest. The commentator suggested that a fund be permitted to respond within five business days of the receipt of request provided that Part B is mailed at least twenty days prior to the shareholder meeting, the date of the vote or the expiration date of an exchange offer, or within one day if there are fewer than twenty days prior to the meeting or other date. The Commission believes that a simple, consistently-applied requirement will best ensure that shareholder requests for the Statement of Additional Information are processed properly. For this reason and because the one-day delivery deadline corresponds to the one day period prescribed for delivery of certain materials under Form S–4, the Commission is adopting the requirement as proposed. In response to comment, however, the form has been changed so that registrants which provide a toll-free telephone number for shareholders to request Part B will not be required also to include a post card request form.

D. Other changes

A number of technical changes have been made in the form and instructions in response to comments. These changes are listed below.

1. The declaration to register securities under existing Rule 24f-2 is now printed on the facing page.

2. The option to select a date for automatic effectiveness under Rule 488 is now printed on the facing page.

3. Instruction G makes clear that the existing Statement of Additional Information may be incorporated by reference into Form N-14.

4. The requirement under Item 2(b) for a statement that reports and other information filed by the registrant may be inspected at Commission offices and the addresses of these offices is moved to Item 5.

5. A clarification is made to indicate that Exhibits 1, 2 and 13 under Item 16 apply to the registrant and not to the acquired fund.

Availability of Final Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis with regard to adoption of Form N-14 and a related rule and rule amendments. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing that form and related rule and rule amendments at 50 FR 11725 (March 25, 1985). Anyone who wishes to obtain a copy of the Final Regulatory Flexibility Analysis for Form N-14 should contact Stephen C. Beach, (202) 272-3040, Stop 5-2, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Statutory Authority

The Commission hereby adopts Form N-14, Securities Act Rule 488 and amendments to Rule 30-5 of Part 200, Rule 3-50(b) of Regulation S-X, Securities Act Rule 145, and Exchange Act Rules 14a-3, 14a-6, 14c-2 and 14c-5 pursuant to sections 6, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77h, 77j, and 77s(a)] and sections 14(a), 14(c), and 23(a) of the Exchange Act [15 U.S.C 78n(a), 78n(c) and 78w.]

List of Subjects in 17 CFR Parts 200, 210, 239 and 240

Reporting and recordkeeping requirements, Securities.

IV. Text Rules and Form

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901 as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11.

2. Section 200.30-5 is amended by adding paragraph (b-4) as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b) * * *

(b-4) With respect to registration statements filed pursuant to paragraph (a) of rule 488 under the Act (17 CFR 230.488(a)):

(1) To suspend the operation of said paragraphs and to issue written notices to registrants of such suspensions;

(2) To determine such amendments to be effective within shorter periods of time than the thirtieth day after the filing thereof.

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

3. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78o, 78w, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37.

4. Section 210.3-05 is amended by revising paragraph (b)(1) introductory text as follows:

§ 210.3-05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) *Periods to be presented.* (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N-14. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in the paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy statements or in a registration statement filed on Forms N-14, S-4 or F-4 (§ 239.23, 25, or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 210.1-02(v). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230 continues to read as follows:

Authority: Sections 230.100 to 230.174 issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s.

6. Section 230.145 is amended by revising the Preliminary Note and Notes 1 and 2 as follows:

§ 230.145 Reclassification of securities, mergers, consolidations, and acquisitions of assets.

Preliminary Note

Rule 145 (§ 230.145 of this chapter) is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (Act), to persons who are offered securities in a business combination of the type described in paragraphs (a) (1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision, whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. *See* Release No. 33-5316 (October 6, 1972) [37 FR 23631]. Securities issued in transactions described in paragraph (a) of Rule 145 may be registered on Form S-4 or F-4 (§ 239.25 or § 239.34 of this chapter) or Form N-14 (§ 239.23 of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a)(9), (10), (11) and

4(2), are otherwise available are not affected by Rule 145.

Note 1.—Reference is made to Rule 153a (§ 230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

Note 2.—A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to section 3(a)(9) or (11) of the Act if the conditions of either of these sections are satisfied.

* * * * *

7. Section 230.488 is added to read as follows:

§ 230.488 Effective date of registration statements relating to securities to be issued in certain business combination transactions.

(a) A registration statement filed on Form N–14 by a registered open-end management investment company for the purpose of registering securities to be issued in an exchange offer or other business combination transaction pursuant to Rule 145 under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] shall become effective on the thirtieth day after the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the registration statement, which date shall be not later than fifty days after the date on which the registration statement is filed, unless the Commission having due regard to the public interest and the protection of investors declares such amendment effective on an earlier date, provided the following conditions are met:

(1) Any prospectus filed as a part of the registration statement does not include disclosure relating to any other proposal to be acted on at a meeting of the shareholders of either company other than proposals related to an exchange offer, or a business combination transaction pursuant to Rule 145(a), and any other proposal relating to: (i) Uncontested election of directors, (ii) ratification of the selection of accountants, (iii) the continuation of a current advisory contract, (iv) increases in the number or amount of shares authorized to be issued by the registrant; and (v) continuation of any current contract relating to the distribution of shares issued by the registrant; and

(2) The registration statement recites on the facing sheet that the registrant proposes that the filing become effective pursuant to this rule.

(b) No registration statement shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of the registration statement, it should appear to the Commission that the registration statement may be incomplete or inaccurate in any material respect and the Commission furnishes to the registrant written notice that the effective date is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of the registration statement, it shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.*, § 239.23 also under Sec. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; Secs. 204, 205, 209, 48 Stat. 906, 908; and secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(b), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78n(c), 78w(a).

9. Section 239.23 is revised to read as follows:

Note.—The text of Form N–14 does not appear in the Code of Federal Regulations.

§ 239.23 Form N–14, for the registration of securities issued in business combination transactions by investment companies and business development companies.

This form shall be used by a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 for registration under the Securities Act of 1933 of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable state law would not require the solicitation of the votes or consents of all the security holders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement;

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * *

11. Section 240.14a–3 is amended by revising paragraph (a) as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) or with written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23) and containing the information specified in such Form.

* * * * *

12. Section 240.14a–6 is amended by revising paragraph (j) as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter), or Form N–14 (§ 239.23 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–4, Form F–4 or Form N–14 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

13. Section 240.14c–2 is amended by revising paragraph (a) as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the

Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matters to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

14. Section 240.14c–5 is amended by revising paragraph (e) as follows:

§ 240.14c–5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or 34 of this chapter), or Form N–14 (§ 239.23 of this chapter), shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S–4 or F–4 or Form N–14 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

By the Commission.

John Wheeler,

Secretary.

November 14, 1985.

BILLING CODE 8010–01–M

FORM N—14

U.S. Securities and Exchange Commission
Washington, D.C. 20549

OMB APPROVAL
OMB NUMBER: 3235-0336
Expires: May 31, 1988

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

☐ Pre-Effective Amendment No. ____ ☐ Post-Effective Amendment No. ____

(Check appropriate box or boxes)

Exact Name of Registrant as Specified in Charter:	Area Code and Telephone Number:
Address of Principal Executive Offices: (Number, Street, City, State, Zip Code)	
Name and Address of Agent for Service:	Approximate Date of Proposed Public Offering:
(Number and Street) (City) (State) (Zip Code)	

Calculation of Registration Fee under the Securities Act of 1933:

Title of Securities Being Registered	Amount Being Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

[If the registration statement is filed pursuant to Rule 488, include the following information:]

It is proposed that this filing will become effective on (date) pursuant to Rule 488.

Instruction

Registrants that are registering an indefinite number of securities under the Securities Act of 1933 pursuant to Investment Company Act Rule 24f-2 [17 CFR 270.24f-2] should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, instead of or in addition to the Securities Act registration fee table.

Table of Contents of Form N-14

GENERAL INSTRUCTIONS

A. Who May Use Form N-14

Form N-14 may be used by all management investment companies registered under the Investment Company Act of 1940 ("1940 Act") and business development companies as defined by Section 2(a)(48) of the 1940 Act to register under the Securities Act of 1933 ("1933 Act" or "Securities Act") securities to be issued in (1) a transaction of the type specified in Securities Act Rule 145(a) [17 CFR 230.145(a)]; (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N-14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement.

B. Registration Fee

Section 6(b) of the 1933 Act and Rule 457 [17 CFR 230.457] thereunder set forth the fee requirements under the 1933 Act. Registrants that have elected to register an indefinite number of shares are also directed to Rule 24f-2 under the 1940 Act [17 CFR 270.24f-2] for purposes of computing the filing fee.

Contemporaneous with a filing on Form N-14, an open-end management company may be offering its securities to the public by means of a current prospectus under an effective registration statement and may have filed an election, under Rule 24f-2, to register an indefinite number of those shares. The prospectus included in a registration statement filed on Form N-14 may be used, under Rule 429(a) [17 CFR 230.429(a)], in connection with the securities covered by the earlier registration statement for which an indefinite number of shares have been registered pursuant to an election under Rule 24f-2 which has not been terminated. If this procedure is used, however, the facing sheet of the registration statement on Form N-14 must state that no filing fee is due because of reliance on Rule 24f-2, and the registrant must file as an exhibit to this registration statement a copy of its earlier declaration under Rule 24f-2.

C. Application of Securities Act Rules

Attention is directed to the General Rules and Regulations under the 1933 Act, particularly Regulation C [17 CFR 230.400 et seq.]. That regulation contains general requirements regarding the preparation and filing of registration statements.

D. Application of Exchange Act Rules

1. If the registrant or any other person which is a party to the transaction submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and that person's submission to its security holders is subject to (i) Regulation 14A [17 CFR 240.14a-1 through 14a-101] or 14C [17 CFR 240.14c-1 through 14c-101] under the Securities Exchange Act of 1934 ("1934 Act" or "Exchange Act") or (ii) the proxy rules under Section 20 of the Investment Company Act [17 CFR 270.20a-1 through 20a-3], then the provisions of those regulations shall apply in all respects to the submission, except that the prospectus, which may be in the form of a proxy or information statement, shall contain the information required by this Form in lieu of that required by (i) Schedule 14A [17 CFR 240.14a-101] or 14C [17 CFR 240.14c-101] of Regulation 14A or 14C and (ii) the proxy rules under Section 20 of the Investment Company Act [17 CFR 270.20a-1 through 20a-3]. It should be noted, however, that if a separate proposal subject to those proxy requirements (for example, with respect to action to be taken on the election of directors or on an investment advisory contract), is submitted to security holders, the submission also must comply with the relevant information requirements of Schedule 14A [17 CFR 240.14a-101] or Schedule 14C [17 CFR 240.14c-101] of Regulation 14A or 14C and the Investment Company Act proxy rules [17 CFR 270.20a-1 through 20a-3]. Copies of the preliminary and definitive proxy or information statement, Form of proxy or other material filed as part of the registration statement shall be deemed filed pursuant to the requirements of those regulations. All other soliciting material shall be filed in accordance with that regulation.

2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, it shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto before the material is used.

E. Documents Comprising Registration Statement

A registration statement or an amendment to it filed under the 1933 Act shall consist of the facing sheet of the Form, Part A, Part B, Part C, required signatures, and all other documents which are required or which the registrant elects to file as a part of the registration statement.

F. Preparation of the Registration Statement

Instructions for completing Form N-14 are divided into three parts. Part A pertains to information that must be in the prospectus required by Section 10(a) of the Securities Act of 1933. Part B pertains to information that must be in the Statement of Additional Information. Part C pertains to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the registrant and the transaction in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, care should be taken that the information in the prospectus is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive detail may make the prospectus difficult for many investors to understand and may, therefore, detract from its usefulness. Accordingly, registrants should adhere to the following guidelines in responding to the items in Part A:

1. Responses to these items, particularly those that call for a brief description, should be as simple and direct as possible and should include only information needed to understand the fundamental characteristics of the registrant. Brevity is particularly important in describing practices or aspects of the registrant's operations that do not differ materially from those of other investment companies.

2. Descriptions of practices that are necessitated or otherwise affected by legal requirements should generally not include detailed discussions of the law.

3. Responses to those items that use terms such as "list" or "identify" should include only a minimum explanation of the matters being listed or identified.

4. The so-called President's Letter, which provides a summary of the proposed transaction, may be used as the initial or introductory document to the Part A prospectus.

Part B: Statement of Additional Information

Part B of the Registration Statement consists of additional information about the registrant and the company being acquired and certain financial information that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to require in the prospectus, if the registrant complies with certain conditions.

The Statement of Additional Information or information in response to Item 6 of Form N-14 need not be included in the prospectus or accompany it when sent to shareholders provided that: (1) the prospectus is sent (by first class mail or any other means designed to assure reasonably prompt delivery) or given to prospective investors at least 20 business days prior to (a) the date on which the meeting of security holders is held or (b) if no meeting is held, the earlier of the date of the vote, consent or authorization, the date the transaction is consummated or the date the securities are purchased, or (c) in the case of an exchange offer subject to the tender offer rules, the scheduled expiration date of the offer; (2) the cover page of the prospectus (or proxy statement in the case of a prospectus in the form of a proxy statement) states that the Statement of Additional Information is available upon oral or written request and without charge (if the registrant has a toll-free telephone number for use by prospective investors that number must be provided); in addition, a self-addressed card for requesting the Statement of Additional Information must also accompany the prospectus unless the toll-free telephone number is provided, and; (3) if a request for the Statement of Additional Information is received by the registrant, the statement must be sent within one business day of receipt of the request and must be sent by first class mail or other means designed to ensure equally prompt delivery.

The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act [17 CFR 230.423]. Furthermore, the Statement of Additional Information should be made available to investors as of the same time that the prospectus becomes available for purposes of Rule 430 under the 1933 Act [17 CFR 230.430].

G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed with the Commission

If any party to a transaction registered on Form N-14 is registered under the 1940 Act and has a current prospectus which meets the requirements of Section 10(a)(3) of the 1933 Act or is current in its reports filed pursuant to Section 30(d) of the 1940 Act, the registrant may, if it so elects, incorporate by reference the prospectus, the corresponding Statement of Additional Information, or reports, or any information in the prospectus, the corresponding Statement of Additional Information, or reports, which satisfies the disclosure required by Items 5, 6, and 11 through 14 of this Form. If the registrant elects to incorporate information by reference into the prospectus, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the prospectus. Notwithstanding the foregoing the registrant may, at its discretion, incorporate any or all of the Statement of Additional Information into the prospectus delivered to investors, without delivering the Statement with the prospectus, so long as the Statement is available to investors as provided in General Instruction F. The registrant also may incorporate by reference into the prospectus information about the company being acquired without delivering the information with the prospectus under certain conditions pursuant to Item 6 of Form N-14, and in accordance with the requirements of Instruction F.

If the registrant elects to incorporate information by reference into the Statement of Additional Information, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the Statement of Additional Information sent to shareholders.

Attention is directed to Rule 411 under the 1933 Act [17 CFR 230.411] regarding the need to clearly identify in the prospectus what information is incorporated by reference.

PART A. INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. Beginning of Registration Statement and Outside Front Cover Page of Prospectus

(a) The facing page of the registration statement shall contain the cross-reference sheet required by Rule 481(a) [17 CFR 230.481(a)].

(b) The outside front cover page of the prospectus shall contain the following information:

(1) the registrant's name, the address (including zip code) and telephone number (including area code) of its principal executive offices and, where applicable, its sponsor's name;

(2) an identification of the type of fund or separate account (as defined in Section 2(a)(37) of the 1940 Act) or a brief description of the registrant's investment objectives;

(3) a statement summarizing the proposed transaction, naming the parties to it and giving the address (including zip code) and telephone number (including area code) of the principal executive offices of the company being acquired;

(4) a statement or statements that:

(i) the prospectus sets forth concisely the information about the registrant that a prospective investor ought to know before investing;

(ii) the prospectus should be retained for future reference; and

(iii) additional information about the registrant has been filed with the Commission and is available upon oral or written request and without charge. (This statement should include instructions about how to obtain the additional information and whether any of the Statement of Additional Information has been incorporated by reference into the prospectus);

(5) the date of the prospectus and date of any Statement of Additional Information;

(6) the statement required by Securities Act Rule 481(b)(1) [17 CFR 230.481(b)(1)]; and

(7) such other information as required by rules of the Commission or of any other governmental authority having jurisdiction over the registrant or the issuance of its securities.

(c) The cover page may include other information, but that additional information must not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 2. Beginning and Outside Back Cover Page of Prospectus

The following information, to the extent applicable, shall appear on the front or on the outside back cover page of the prospectus:

(a) the name of any national securities exchange on which the registrant's securities are listed and a statement that reports, proxy material and other information concerning the registrant can be inspected at the exchanges;

(b) the table of contents required by Rule 481(c) [17 CFR 230.481(c)].

Item 3. Synopsis Information and Risk Factors

(a) The registrant shall include at the beginning of the prospectus a synopsis of the information contained in the prospectus. The synopsis shall be a clear and concise discussion of the key features of the transaction, of the registrant, and of the company being acquired. As to the registrant and company being acquired compare: (1) investment objectives and policies; (2) advisory fees; (3) other significant fees; (4) distribution and purchase procedures and exchange rights; (5) redemption procedures; and (6) any other significant considerations. Highlight differences. Discuss the primary federal tax and other consequences of the proposed transaction to the security holders.

(b) Immediately after the synopsis, briefly discuss the principal risk factors of investing in the registrant. Briefly compare these risks with those associated with an investment in the company being acquired. If the registrant is a closed-end investment company, briefly describe any restrictions on the registrant's present or, if applicable, future ability to pay dividends with respect to any class of securities.

Item 4. Information About The Transaction

(a) Outline the material features of the proposed transaction, including:

(1) a brief summary of the terms of the acquisition agreement;

(2) a description of the securities to be issued;

(3) the reasons the registrant and the company being acquired are proposing the transaction;

(4) the federal income tax consequences, if any, to the security holders of both parties, including appropriate references to Internal Revenue Code sections; and

(5) a description of any material differences between the rights of security holders of the company being acquired and the rights of security holders of the registrant.

(b) Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

Item 5. Information About the Registrant

Provide the following information, to the extent applicable, about the registrant:

(a) if the registrant is an open-end management investment company, furnish the information required by Items 3, 4(a) and (b), 5, 6(a), (c), (d), (e), (f) and (g), and 7 through 9 of Form N-1A under the 1940 Act;

(b) if the registrant is a closed-end management investment company, furnish the information required by Items 3, 6 through 10, and 12 through 19 of Form N-2 under the 1940 Act;

(c) if the registrant is a separate account (as defined in Section 2(a)(37) of the 1940 Act) offering variable annuity contracts which are registered under the 1940 Act, furnish the information required by Items 2, 4(a) through (c), and 5 through 14 of Form N-3 under the 1940 Act;

(d) if the registrant is a small business investment company registered under the 1940 Act, furnish the information required by Items 1 though 7, 9 through 13, 15(a), 16, 19, 20, and 21 of Form N-5 under the 1940 Act;

(e) a statement that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission;

(f) a statement that proxy material, reports (and where registrant is subject to Regulation 14A or 14C of the Exchange Act, proxy and information statements) and other information filed by the registrant can be inspected and copied at the public reference facilities maintained by the Commission in Washington D.C., and at certain of its Regional Offices, stating the current address of each facility [see 17 CFR 200.11(b) and 200.80(c)(1)], and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C. 20549 at prescribed rates.

Item 6. Information About the Company Being Acquired

Information about the company being acquired shall be provided as follows:

(a) if the company being acquired is a management investment company registered under the 1940 Act or a business development company as defined by Section 2(a)(48) of the 1940 Act:

1. if the transaction will be submitted to the security holders of the registrant for approval or consent, furnish the information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered;

2. if the transaction will not be submitted to security holders of the registrant for approval or consent, furnish:

(i) the information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered, or

(ii) provided the requirements of Instruction F are satisfied, include a statement that information about the company being acquired is incorporated by reference from the current prospectus of the company being acquired and is available upon request from the registrant without charge. (Provide a copy of the prospectus of the acquired company upon request in accordance with the requirements in Instruction F. If the company being acquired is registered on Form N-1A or Form N-3 under the 1940 Act, in responding to requests under this Item, provide both a copy of the prospectus of the acquired company and the Statement of Additional Information with respect to that prospectus.)

(b) in addition, if the company being acquired is registered under the 1940 Act and is required to file reports under Section 30 of that Act:

(1) state that reports and other information filed by the company being acquired can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C. 20549 at prescribed rates; and

(2) name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at the exchange.

(c) if the company being acquired is not registered under the 1940 Act but is subject to the reporting requirements of Section 13(a) or 15(d) of the 1934 Act, furnish the information that would be required by Item 17(a) of Form S-4 under the 1933 Act; and

(d) if the company being acquired is not registered under the 1940 Act and is not subject to the reporting requirements of either Section 13(a) or 15(d) of the 1934 Act, furnish a brief description of: the business done by the company, including basic identifying information such as the date and form of its organization; its investment objectives and policies; and how the company is managed.

Item 7. Voting Information

(a) If proxies are to be solicited, include, where applicable, the information called for by Items 1 and 3 of Schedule 14A [17 CFR 240.14a-101] of Regulation 14A under the 1934 Act.

(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Items 2 and 3 of Schedule 14C [17 CFR 240.14c-101] under the 1934 Act.

(c) In addition to the information called for by paragraphs (a) and (b) above, include:

(1) the information called for by Item 2 of Schedule 14A [17 CFR 240.14a-101] of Regulation 14A under the 1934 Act;

Instruction: Also state that the exercise of such rights is subject to the "forward pricing" requirements of Rule 22c-1 under the 1940 Act [17 CFR 270.22c-1] and that the Rule supersedes contrary provisions of state law.

(2) the information called for by Item 22 of Schedule 14A [17 CFR 240.14a-101] of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(3) the information called for by Items 5(a) and (b) of Schedule 14A [17 CFR 240.14a-101] of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(4) with respect to both the registrant and the company being acquired:

(i) the name and address of each person who controls either party to the transaction and explain the effect of that control on the voting rights of other security holders. As to each control person, state the percentage of the voting securities owned or any other basis of control. If the control person is a company, give the state or other sovereign power under the laws of which it is organized. List all parents of the control person.

Instruction: For purposes of subparagraph (c)(4)(i), "control" shall mean (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the 1940 Act [15 U.S.C. 80a-2(a)(9)], which has become final, that control exists.

(ii) the name, address and percentage of ownership of each person who owns of record or is known by either party to the transaction to own of record or beneficially 5 percent or more of any class of either party's outstanding equity securities.

Instructions: 1. The percentages are to be calculated on the basis of the amount of securities outstanding.

2. Indicate, as far as practicable, the percentage of registrant's shares to be owned by such persons upon consummation of the proposed transaction on the basis of present holdings and commitments.

3. If to the knowledge of either party to the transaction or any principal underwriter of their securities, 5 percent or more of any class of voting securities of either party are or will be held subject to any voting trust or other similar agreement, this fact must be disclosed.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and show the respective percentage owned in each manner.

(iii) a statement of all equity securities of the registrant, owned by all officers, directors and members of the advisory board of the registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than 1 percent of the class, a statement to that effect is sufficient.

Item 8. Interest of Certain Persons and Experts

(a) Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of any affiliated person of the registrant in the proposed transaction.

Instruction: This Item shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) If any expert named in the registration statement as having prepared or certified any part thereof (or named as having prepared or certified a report or valuation for use in connection with the registration statement), or counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion, or at any time thereafter through the date of effectiveness of the registration statement to which such preparation, certification, or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or was connected with the registrant, managing underwriter (or any principal underwriter, if there are no managing underwriters), voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions: 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For purposes of this instruction, the term "expert" or counsel includes the firm, corporation, partnership or other entity, if any, by which the expert or counsel is employed or of which he is a member or of counsel to, and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in the matter on behalf of the firm, corporation, partnership or entity.

2. Accountants providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note Section 210.2-01 [17 CFR 210.2-01] of Regulation S-X for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.

Item 9. Additional Information Required for Reoffering by Persons Deemed to be Underwriters

If any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, furnish the following information in the prospectus, to the extent it is not already furnished therein:

(a) the name of each security holder;

(b) the nature of any position, office or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliated companies;

(c) the amount of securities owned by the selling security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by the security holder after completion of the offering; and

(d) information about the transaction in which the securities were acquired and any material changes in the registrant's affairs after the transaction.

PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 10. Cover Page

(a) The outside cover page is required to contain the following information:

(i) the registrant's name;

(ii) a statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read in conjunction with the prospectus; and (C) from whom a copy of the prospectus may be obtained;

(iii) the date of the prospectus to which the Statement of Additional Information relates and any other identifying information; and

(iv) the date of the Statement of Additional Information.

(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 11. Table of Contents

Set forth under appropriate captions (and sub-captions) a list of the contents of the Statement of Additional Information and, where useful, provide cross-references to related disclosure in the prospectus.

Item 12. Additional Information about the Registrant

(a) If the registrant is an open-end management investment company, furnish the information required by Items 10 through 23 of Form N-1A under the 1940 Act or Items 15 through 23 of Form N-3, as applicable.

(b) If the registrant is not an open-end management investment company, no specific information about the company need be included.

Item 13. Additional Information about the Company Being Acquired

If the transaction will be submitted to the security holders of the registrant for approval or consent:

(a) if the company being acquired is an open-end management investment company, furnish the information required by Items 10 through 14 and 16 through 23 of Form N-1A under the 1940 Act or Items 15 through 23 of Form N-3, as applicable.

(b) if the company being acquired is not an open-end management investment company, no specific information about the company need be included.

Item 14. Financial Statements

(a) The Statement of Additional Information shall contain the financial statements and schedules of the acquiring company and the company to be acquired required by Regulation S-X [17 CFR 210] for the periods specified in Article 3 of Regulation S-X [17 CFR 210.3-01 et seq.] except:

1. the following statements and schedules required by Regulation S-X may be omitted from Part B of the registration statement and included in Part C:

(i) the statements of any subsidiary which is not a majority-owned subsidiary; and

(ii) the following schedules in support of the most recent balance sheet: (A) columns C and D of Schedule III [17 CFR 210.12-14]; and (B) Schedule IV [17 CFR 210.12-03]; and

2. the pro forma financial statements required by Rule 11-01 of Regulation S-X [17 CFR 210.11-01] need not be prepared if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value, both of which are measured as of a specified date within thirty days prior to the date of filing of this registration statement.

PART C. OTHER INFORMATION

Item 15. Indemnification

State the general effect of any contract, arrangement or statute under which any director, officer, underwriter or affiliated person of the registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any director, officer, affiliated person or underwriter for its own protection.

Instruction: In responding to this Item the registrant should take note of the provisions of Rules 461(c) [17 CFR 230.461] and 484 [17 CFR 230.484] under the 1933 Act and Sections 17(h) and (i) of the 1940 Act [15 U.S.C. 80a-17(h) and (i)].

Item 16. Exhibits

Subject to the rules on incorporation by reference, give a list of all exhibits filed as part of the registration statement.

Exhibits:

(1) copies of the charter of the registrant as now in effect;

(2) copies of the existing bylaws or corresponding instruments of the registrant;

(3) copies of any voting trust agreement affecting more than 5 percent of any class of equity securities of the registrant;

(4) copies of the agreement of acquisition, reorganization, merger, liquidation and any amendments to it;

(5) specimens or copies of each security being registered, including copies of all constituent instruments defining the rights of holders of the securities;

(6) copies of all investment advisory contracts relating to the management of the assets of the registrant;

(7) copies of each underwriting or distribution contract between the registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(8) copies of all bonus, profit sharing, pension or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the registrant in their capacity as such. Furnish a reasonably detailed description of any plan that is not set forth in a formal document;

(9) copies of all custodian agreements and depository contracts under Section 17(f) of the 1940 Act [15 U.S.C. 80a-17(f)], for securities and similar investments of the registrant, including the schedule of remuneration;

(10) copies of any plan entered into by registrant pursuant to Rule 12b-1 under the 1940 Act [17 CFR 270.12b-1] and any agreements with any person relating to implementation of the plan;

(11) an opinion and consent of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable;

(12) an opinion, and consent to their use, of counsel or, in lieu of an opinion, a copy of the revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to shareholders discussed in the prospectus;

(13) copies of all material contracts of the registrant not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the registration statement;

(14) copies of any other opinions, appraisals or rulings, and consents to their use relied on in preparing the registration statement and required by Section 7 of the 1933 Act [15 U.S.C. 77g];

(15) all financial statements omitted pursuant to Item 14(a)(1);

(16) manually signed copies of any power of attorney pursuant to which the name of any person has been signed to the registration statement; and

(17) any additional exhibits which the registrant may wish to file.

Instruction: Subject to the rules on incorporation by reference, the exhibits shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits required above.

Item 17. Undertakings

(1) The undersigned registrant agrees that prior to any public reoffering of the securities registered through the use of a prospectus which is a part of this registration statement by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c) of the Securities Act [17 CFR 230.145c], the reoffering prospectus will contain the information called for by the applicable registration form for reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The undersigned registrant agrees that every prospectus that is filed under paragraph (1) above will be filed as a part of an amendment to the registration statement and will not be used until the amendment is effective, and that, in determining any liability under the 1933 Act, each post-effective amendment shall be deemed to be a new registration statement for the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering of them.

SIGNATURES

As required by the Securities Act of 1933, this registration statement has been signed on behalf of the registrant, in the City of _____ and State of _____, on the _____ day of _____, 19____.

Registrant:

By: (Signature and Title)

As required by the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature:	Title:	Date:

[FR Doc. 85-27893 Filed 11-22-85; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 85N-0301]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, ceftazidime pentahydrate for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 25, 1985; comments, notice of participation, and request for hearing by December 26, 1985; data, information, and analyses to justify a hearing by January 24, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, ceftazidime pentahydrate for injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and the applicant has been given a prior opportunity to comment on the monograph set out in the regulation, and because when effective this regulation provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective November 25, 1985. However, interested persons may, on or before December 26, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 26, 1985, a written notice of participation and request for hearing and (2) on or before January 24, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure; Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR Part 430 continues to read as follows:

Authority: Secs. 507, 701(a), 59 Stat. 463 as amended, 52 Stat. 1055 (21 U.S.C. 357, 371(a)); 21 CFR 5.10.

2. Part 430 is amended:

a. In § 430.5 by adding new paragraphs (a)(86) and (b)(88) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(86) *Ceftazidime.* The term "ceftazidime master standard" means a specific lot of ceftazidime that is designated by the Commissioner as the standard of comparison in determining the potency of the ceftazidime working standard.

(b) * * *

(88) *Ceftazidime.* The term "ceftazidime working standard" means a specific lot of a homogeneous preparation of ceftazidime.

b. In § 430.6 by adding new paragraph (b)(88) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(88) *Ceftazidime.* The term "microgram" applied to ceftazidime means the ceftazidime activity (potency) contained in 1.1834 micrograms of the ceftazidime master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

3. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Part 436 is amended:

a. In § 436.20 by adding new paragraph (d)(8) to read as follows:

§ 436.20 Sterility test methods and procedures.

(d) * * *

* * * * *

(8) *Diluting fluid H.* To each liter of diluting fluid A add 10 grams of sodium bicarbonate before sterilization.

* * * * *

b. In § 436.31 by adding new paragraph (b)(15) to read as follows:

§ 436.31 Equipment and diluents for use in biological testing.

* * * * *

(b) * * *

(15) Diluent 15 (pyrogen-free sodium carbonate solution): Dissolve 9.9 grams of anhydrous pyrogen-free sodium carbonate (prepared as directed in paragraph (a)(5) of this section) in 1,000 milliliters of pyrogen-free, distilled water (diluent 1). Pyrogen-free sodium carbonate solution meets the requirements for the absence of pyrogens as described in § 436.32(a)(3) when 1.0 milliliter per kilogram is administered as described in § 436.32(a)(2).

c. In § 436.32 by adding new paragraph (i) to read as follows:

§ 436.32 Pyrogen test.

* * * * *

(i) *Method 9.* Proceed as directed in paragraph (a) of this section, except dilute sample with pyrogen-free sodium carbonate solution (diluent 15).

d. In § 436.200 by adding new paragraph (h) to read as follows:

§ 436.200 Loss on drying.

* * * * *

(h) *Method 8.* Proceed as directed in paragraph (a) of this section, except transfer approximately 300 milligrams of the sample to a tared weighing bottle equipped with a ground-glass stopper; dry the sample at a temperature of 25 °C and a pressure of 5 millimeters of mercury or less for 4 hours, and then dry the sample at a temperature of 100 °C and a pressure of 5 millimeters of mercury or less for 3 additional hours.

e. By adding new § 436.356 to read as follows:

§ 436.356 High-performance liquid chromatographic assay for ceftazidime.

(a) *Equipment.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 3 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, intrumental conditions, flow rate, and calculations specified in the monograph for the drug being tested. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the equipment described in paragraph (a) of this section. Use the reagents, working standard solution, and sample solution described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution for the system suitability test. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Select the system suitability requirements specified in the monograph for the drug being tested. Then, using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and

f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545 \left[\frac{t_R}{w_h} \right]^2$$

where:

n = Efficiency, as number of theoretical plates for column;

t_R = Retention time of solute; and

w_h = Peak width at half-height.

(3) *Resolution.* Calculate the resolution (R) as follows:

$$R = \frac{2(t_{Rj} - t_{Ri})}{w_i + w_j}$$

where:

t_{Rj} = Retention time of a solute eluting after i (t_{Rj} is larger than t_{Ri});

t_{Ri} = Retention time of any solute;

w_i = Width of peak at baseline measured by extrapolating the relatively straight sides to the baseline of any solute; and

w_j = Width of peak at baseline measured by extrapolating the relatively straight sides to the baseline of any solute eluting after i.

(4) *Coefficient of variation (relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{\bar{X}} \left[\frac{\sum_{i=1}^{N} (X_i - \bar{X})^2}{N-1} \right]^{\frac{1}{2}}$$

where:

$\bar{X}$ is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, except alternate injections of the working standard solution with injections of the sample solution.

f. By adding new § 436.357 to read as follows:

§ 436.357 Atomic absorption test for sodium carbonate content of ceftazidime pentahydrate for injection.

(a) *Equipment.* A suitable atomic absorbance spectrophotometer equipped with:

(1) A suitable sodium hollow-cathode discharge lamp;

(2) An oxidizing air-acetylene flame;

(3) A nebulizer-burner system;

(4) An optical dispersing device capable of isolating a resonance line of sodium from other wavelengths produced by the emission source; and

(5) A suitable radiation detector.

(b) *Ionization buffer.* Dissolve and dilute 19.07 grams of potassium chloride in distilled water to 1,000 milliliters.

(c) *Preparation of reference standard and sample solutions*—(1) *Reference standard solution.* Accurately weigh approximately 140 milligrams of sodium chloride, which has been previously dried for 40 to 50 minutes at a temperature of 500 to 650 °C. Dissolve and dilute with sufficient distilled water to obtain a stock solution containing 5.5 micrograms of sodium per milliliter. Mix 10 milliliters of the stock solution with 10 milliliters of ionization buffer and dilute the mixture with distilled water to obtain a solution containing 0.55 microgram of sodium per milliliter.

(2) *Sample solution.* Dilute the stock sample solution, prepared as directed in § 442.216(b)(1)(i)(*a*) of this chapter, with distilled water to obtain a solution containing 5.5 micrograms of sodium per milliliter (estimated). Mix 10 milliliters of this solution with 10 milliliters of ionization buffer and dilute the mixture with distilled water to obtain a solution containing 0.55 microgram of sodium per milliliter (estimated).

(3) *Procedure.* Determine the atomic absorbance of the reference standard and sample solutions at a wavelength of 589 nanometers, using the atomic absorbance spectrophotometer and a reagent blank prepared by diluting 10 milliliters of ionization buffer to 100 milliliters with distilled water.

(d) *Calculations.* Calculate the percent sodium carbonate (S) as follows:

$$\text{Percent sodium carbonate} = \frac{A_u \times P_s \times 2.304}{A_s \times C_u \times 10}$$

where:

A_u = Absorbance of sodium in the sample solution;

A_s = Absorbance of sodium in the reference standard solution;

P_s = Sodium concentration in the reference standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

g. By adding new § 436.358 to read as follows:

§ 436.358 High-performance liquid chromatographic assay for pyridine.

(a) *Equipment.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 15 to 25 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the pyridine content using the temperature, instrumental conditions, flow rate, and calculations specified in the monograph for the drug being tested. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 25 percent of scale with typical chart speed of not less than 2.5 milliliters per minute. Use the equipment described in paragraph (a) of this section. Use the reagents, working standard solution, and sample solution described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed for the system suitability test by five replicate injections of the same volume (between 10 and 20 microliters) of the system suitability test solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Select the system suitability requirements specified in the monograph for the drug being tested. Then, using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor for the pyridine peak (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and

f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Resolution.* Calculate the resolution (R) as follows:

$$R = \frac{2(t_{Rj} - t_{Ri})}{w_i + w_j}$$

where:

t_{Rj} = Retention time of *t*-butyl ceftazidime;

t_{Ri} = Retention time of pyridine;

w_i = Width of pyridine peak at the baseline measured by extrapolating the relatively straight sides to the baseline; and

w_j = Width of *t*-butyl ceftazidime peak at the baseline measured by extrapolating the relatively straight sides to the baseline.

(3) *Coefficient of variation (relative standard deviations).* Calculate the coefficient of variation for the pyridine peak (S_R in percent) as follows:

$$S_R = \frac{100}{\bar{X}} \left[\frac{\sum_{i=1}^{N} (X_i - \bar{X})^2}{N-1} \right]^{\frac{1}{2}}$$

where:

$\bar{X}$ is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, except alternate injections of the working standard solution with injections of the sample solution.

h. By adding new § 436.360 to read as follows:

§ 436.360 Gel permeation chromatographic assay for high molecular weight polymer.

(a) *Equipment.* A suitable gel permeation chromatograph equipped with.

(1) A suitable detection system specified in the monograph for the drug being tested.

(2) A suitable recording device of at least 25-centimeter deflection.

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 50 centimeters long and 9 millimeters internal diameter, packed with a material as defined in the monograph for the drug being tested.

(b) *Procedure.* Perform the assay and calculate the high molecular weight polymer content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 10 percent of scale with a typical chart speed of not less than 2.5 millimeters per minute. Use the equipment described in paragraph (a) of this section. Use the reagents, working standard solution, and sample solution described in the monograph for the drug being tested. Equilibrate and condition the column by passage of mobile phase for not less than 18 hours, removing any voids that may form at the top of the column, followed by five replicate injections of the same volume (100 microliters) of the blue dextran system suitability test solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Select the system suitability requirements specified in the monograph for drug being tested. Then, using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:
$W_{0.05}$ = Width of peak at 5 percent height; and
f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545\left[\frac{t_R}{W_h}\right]^2$$

where:
n = Efficiency, as number of theoretical plates for column;
t_R = Retention time of solute; and
W_h = Peak width at half-height.

(3) *Coefficient of variation (relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{\bar{X}}\left[\frac{\sum_{i=1}^{N}(X_i-\bar{X})^2}{N-1}\right]^{\frac{1}{2}}$$

where:
$\bar{X}$ is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using two injections of the same volume (100 microliters) of the working standard solution followed by one injection of the same volume (100 microliters) of the sample solution.

PART 442—CEPHA ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

6. Part 442 is amended:

a. By adding new § 442.16a to read as follows:

§ 442.16a Sterile ceftazidime pentahydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile ceftazidime pentahydrate is pyridinium, 1-[[7-[[2-amino-4-thiazolyl][(1-carboxy-1-methylethoxy)imino]acetyl]amino]-2-carboxy-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-en-3-yl]methyl]-, hydroxide, inner salt, [6*R*-[6α, 7β(*Z*)]]-, pentahydrate. It is so purified and dried that:

(i) Its potency is not less than 950 micrograms and not more than 1,020 micrograms of ceftazidime activity per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its loss on drying is not less than 13.0 and not more than 15.0 percent.

(v) Its pH in an aqueous solution containing 5 milligrams of ceftazidime per milliliter is not less than 3.0 and not more than 4.0.

(vi) It is crystalline.

(vii) It gives a positive identity test for ceftazidime.

(viii) Its high molecular weight polymer content is not more than 0.05 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain.

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, loss on drying, pH, crystallinity, identity, and high molecular weight polymer content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*b*) For sterility testing: One package containing approximately 6 grams of a composite sample.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.356 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as hexyl, octyl, or octaldecyl hydrocarbon bonded silicas, a flow rate of 2.0 milliliters per minute, and a known injection volume of 20 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *Phosphate buffer, pH 7.0.* Dissolve 42.59 grams of sodium phosphate, dibasic anhydrous and 27.22 grams of potassium phosphate, monobasic, in water and dilute to 1,000 milliliters.

(*b*) *Mobile phase.* Mix 40 milliliters of acetonitrile and 200 milliliters of phosphate buffer, pH 7.0, and dilute to 2,000 milliters with water. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(ii) *Preparation of working standard and sample solutions*—(*a*) *Working standard solution.* Accurately weigh ceftazidime working standard equivalent to approximately 100 milligrams of the ceftazidime activity into a 100-milliliter volumetric flask containing 10 milliliters of phosphate buffer, pH 7.0. Shake until dissolved. Dilute to volume with water to obtain a

stock solution containing approximately 1,000 micrograms of ceftazidime activity per milliliter. Mix well. Immediately prior to chromatography, further dilute 5 milliliters of stock solution to 50 milliliters with water to obtain a solution containing 100 micrograms of ceftazidime activity per milliliter.

(*b*) *Sample solution.* Accurately weigh approximately 115 milligrams of the sample into a 100-milliliter volumetric flask containing 10 milliliters of phosphate buffer, pH 7.0. Shake until dissolved. Dilute to volume with water to obtain a stock solution containing approximately 1,000 micrograms of ceftazidime per milliliter. Mix well. Immediately prior to chromatography, further dilute 5 milliliters of stock solution to 50 milliliters with water to obtain a solution containing 100 micrograms of ceftzidime activity per milliliter (estimated).

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.5 at 5 percent of peak height.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,500 theoretical plates.

(*c*) *Resolution.* The resolution (*R*) between the peak for ceftazidime and its nearest eluting impurity is satisfactory if it is not less than 2.0.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satifactory if it is not more than 1.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.356(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are provided comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(*b*) of this section should not be changed.

(iv) *Calculations.* Calculate the micrograms of ceftazidime per milligram of sample as follows:

$$\text{Micrograms of ceftazidime per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u (100 - m)}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent loss on drying content of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except dissolve the sample in approximately 200 milliliters of diluting fluid H.

(3) *Pyrogens.* Proceed as directed in § 436.32(i) of this chapter, using a solution containing 80 milligrams of ceftazidime per milliliter.

(4) *Loss of drying.* Proceed as directed in § 436.200(a) of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 5 milligrams of ceftazidime per milliliter.

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(7) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the ceftazidime working standard.

(8) *High molecular weight polymer content.* Proceed as directed in § 436.360 of this chapter, using a constant temperature between 20 and 25 °C an ultraviolet detection system operating at a wavelength of 235 nanometers, a column packed with a hydrophilic gel for gel permeation chromatography (such as Fractogel TSK HW-40(F), Merck) or equivalent, a flow rate of 1.0 milliliter per minute, and a known injection volume of 100 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *Mobile phase.* Adjust a 0.1*M* solution of potassium phosphate, dibasic, to pH 7.0±0.1 with phosphoric acid.

(*b*) *Blue dextran system suitability test solution.* Prepare a solution in mobile phase containing 100 micrograms per milliliter of blue dextran (with a mean molecular weight of approximately 2,000,000).

(ii) *Preparation of working standard and sample solutions*—(*a*) *Working standard solution.* Accurately weigh high molecular weight polymer working standard equivalent to approximately 400 micrograms of high molecular weight polymer into a 100-milliliter volumetric flask and add 80 milliliters of mobile phase. Shake until dissolved and dilute to volume with mobile phase to obtain a solution containing approximately 4 micrograms of high molecular weight polymer per milliliter. Store the solution at ambient temperature and inject into the chromatograph within one hour of preparation.

(*b*) *Sample solution.* Accurately weigh approximately 400 milligrams of the sample into a 100-milliliter volumetric flask and add 80 milliliters of mobile phase. Shake until dissolved, dilute to volume with mobile phase, and immediately inject the solution into the liquid chromatograph.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The trailing factor (*T*) is satisfactory if it is not more than 1.5 for blue dextran.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,500 theoretical plates for blue dextran.

(*c*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections of blue dextran is satisfatory if it is not more than 4 percent.

If the system suitability requirements have been met, then proceed as described in § 436.360(b) of this chapter.

(iv) *Calculations.* Calculate the percent of high molecular weight polymer content as follows:

$$\text{High molecular weight polymer content in percent} = \frac{H_u \times P_s \times 0.1}{H_s \times C_u}$$

where:

H_u = Height of the high molecular weight polymer peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

H_s = Mean height of the high molecular weight polymer peaks in the chromatograms of the high molecular weight polymer working standard;

P_s = High molecular weight polymer content of the high molecular weight polymer working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

b. By adding new § 442.216 to read as follows:

§ 442.216 Ceftazidime pentahydrate for injection.

(a) *Requirements of certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftazidime pentahydrate for injection is a dry mixture of ceftazidime pentahydrate and sodium carbonate. Its ceftazidime potency is satisfactory if each milligram of ceftazidime pentahydrate for injection contains not less than 900 micrograms and not more than 1,050 micrograms of

ceftazidime activity when corrected for both sodium carbonate content and loss on drying. Its ceftazidime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of ceftazidime that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 13.5 percent. Its pH is not less than 5.0 and not more than 7.5. Its pyridine content is not more than 0.4 percent, except that for the issuance of a certificate for each batch, the pyridine content is not more than 0.12 percent. The ceftazidime pentahydrate conforms to the standards prescribed by § 442.16a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The ceftazidime pentahydrate used in making the batch for potency, loss on drying, pH, crystallinity, identity, and high molecular weight polymer content.

(*b*) The batch for ceftazidime potency, ceftazidime content, sterility, pyrogens, loss of drying, pH, and pyridine content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The ceftazidime pentahydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Ceftazidime potency and content.* Determine both micrograms of ceftazidime per milligram of sample and milligrams of ceftazidime per container. Proceed as directed in § 442.16a(b)(1), preparing the sample solutions and calculating the potency and content as follows:

(i) *Preparation of sample solutions.* Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(i) (*a*) and (*b*) of this section.

(*a*) *Ceftazidime potency (micrograms of ceftazidime per milligram).* Accurately weigh and dissolve approximately 330 milligrams of ceftazidime sample in distilled water and dilute to volume in a 250-milliliter volumeteric flask to obtain a stock solution containing approximately 1,000 micrograms of ceftazidime per milliliter. Mix well. Immediately prior to chromatography, further dilute 5 milliliters of stock solution to 50 milliliters with water to obtain a solution containing 100 micrograms of ceftazidime activity per milliliter (estimated).

(*b*) *Ceftazidime content (milligrams of ceftazidime per vial).* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of this solution with distilled water to obtain a concentration of 1.0 milligram per milliliter (estimated). Immediately prior to chromatography, dilute 5.0 milliliters of the sample solution to 50 milliliters with water.

(ii) *Calculations*—(*a*) *Ceftazidime potency (micrograms per milligram).* Calculate the micrograms of ceftazidime per milligram as follows:

$$\text{Micrograms of ceftazidime per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100 - m - S)}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution;

m = Percent loss of drying (determined as directed in § 436.200(h) of this chapter); and

S = Percent sodium carbonate content of the sample (determined as directed in § 436.357 of this chapter).

(*b*) *Ceftazidime content (milligrams of ceftazidime per vial).* Calculate the ceftazidime content of the vial as follows:

$$\text{Milligrams of ceftazidime per vial} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 80 milligrams of ceftazidime per milliliter.

(4) *Loss on drying.* Proceed as directed in § 436.200(g) of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, preparing the sample solution as follows: reconstitute the sample in the sealed container to give an aqueous solution containing approximately 100 milligrams per milliliter, relieving the pressure inside the container if necessary during the reconstitution.

(6) *Pyridine content.* Proceed as directed in § 436.358 of this chapter, using a temperature of 40 °C, an ultraviolet detection system operating at a wavelength of 254 nanometers, a column packed with microparticulate (5 micrometers in diameter) reversed phase packing material such as octadecyl hydrocarbon bonded silicas, a flow rate of 1.6 milliliters per minute, and a known injection volume from 10 to 20 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *Phosphate buffer, pH 7.0.* Dissolve 5.68 grams of sodium, phosphate, dibasic, anhydrous and 3.63 grams of potassium phosphate, monobasic, in water and dilute to 1,000 milliliters.

(*b*) *Mobile phase.* Mix 300 milliliters of acetonitrile and 100 milliliters of 0.25*M* ammonium phosphate, monobasic, dilute to 1,000 milliliters with water and add sufficient 10*M* ammonia solution to give a pH of 7.0±0.1. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(*c*) *System suitability test solution.* Prepare a solution in phosphate buffer, pH 7.0, containing 25 micrograms of pyridine and 25 micrograms of an authentic sample of (6*R*, 7*R*)-7-[(*Z*)-2-(2-Aminothiazol-4-yl)-2-(2-*t*-butoxycarbonylprop-2-yloxyimino) acetamido]-3-(1-pyridiniummethyl) ceph-3-em-4-

carboxylate (*t*-butyl ceftazidime) per milliliter. Note, if no *t*-butyl ceftazidime is present in the sample solution, the working standard solution may be substituted for the system suitability test solution and the system suitability requirement for resolution for *t*-butyl ceftazidime is omitted.

(ii) *Preparation of working standard and sample solutions—(a) Working standard solution.* Accurately weigh approximately 250 milligrams of pyridine into a 100-milliliter volumeteric flask and dilute to volume with water to obtain a stock solution containing approximately 2,500 micro grams of pyridine per milliliter. Mix well. Immediately prior to chromatography, further dilute 2.0 milliliters of stock solution to 200 milliliters with phosphate buffer, pH 7.0, to obtain a solution containing 25 micrograms of pyridine per milliliter.

(*b*) *Sample solution.* Accurately weigh approximately 660 milligrams of the sample into a 100-milliliter volumetric flask and add 50 milliliters of phosphate buffer, pH 7.0. Shake until dissolved and dilute to volume with phosphate buffer, pH 7.0. Mix well. Store the solution at a temperature below 15° C And inject into the chromatograph within 1 hour of preparation.

(iii) *System suitability requirements—(a) Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 2.5 at 5 percent of peak height.

(*b*) *Resolution.* The resolution (*R*) between the peak for pyridine and the peak for *t*-butyl ceftazidime is satisfactory if it is not less than 3.

(*c*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 3 percent.

If the system suitability requirements have been met, then proceed as described in § 436.358(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(6)(ii)(*b*) of this section should not be changed.

(iv) *Calculations.* Calculate the pyridine content in percent of the sample as follows:

$$\text{Pyridine content in percent} = \frac{H_u \times P_p \times 0.1}{H_s \times C_u}$$

where:

H_u = Height of the pyridine peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

H_s = Height of the pyridine peak in the chromatogram of the pyridine working standard;

P_p = Pyridine content of the pyridine working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

Dated: November 19, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-28039 Filed 11-20-85; 3:05 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-20]

Marine Event; Southern California December Boat Parades

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish special local regulations during all the annual December boat parades which take place throughout Southern California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during each parade.

EFFECTIVE DATE: These regulations become effective on 7 December 1985 and terminate on 22 December 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The applications to hold these events have not been received, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. This rule will benefit the public by providing regulations which would protect life and property on navigable waters during each event. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the **Federal Register** in accordance with 5 U.S.C. 553(d)(3).

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-20) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT David S. Riley, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

Each year various Yacht Clubs, Harbor Departments and Chambers of Commerce sponsor boat parades of lights. These parades consist of anywhere from 50 to 200 participants in vessels of various sizes which proceed at slow speeds around a harbor area. These vessels are highly decorated with lights and other ornamentation and usually present no hazard to navigation, however, given the number of participants and the uncertainty of spectators at each event it is sometimes necessary to control traffic to avoid any potential mishap. Therefore vessels desiring to transit a regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary section 100.35 11-85-20 to read as follows:

§ 100.35 11-85-20-Southern California December Boat Parades.

(a) Regulated Area: The following areas might be closed intermittently to all vessel traffic:

(1) Shoreline Yacht Club of Long Beach Festival of 1000 Lights: that portion of Long Beach Harbor, bounded by Shoreline Marina, the Queens Way Bridge and the Queen Mary.

(2) Huntington Harbor Philharmonic Society Symphony of Lights Parade: the entire Huntington Harbor area.

(3) Greater Shelter Island Association Christmas Boat Parade: that portion of the northern half of San Diego Harbor from Seaport Village to the Shelter Island Yacht Basin.

(4) Pioneer Skipper Boat Owners Association Christmas Boat Parade: all main and entrance channels of Marina del Rey.

(5) Los Angeles Harbor Department Christmas Afloat Parade: that portion of Los Angeles Harbor Main Channel from the Vincent Thomas Bridge to Berth 72 (the entrance to San Pedroi Slip).

(6) Newport Beach Area Chamber of Commerce Christmas Boat Parade: the entire Newport Harbor area.

(7) Mission Bay Yacht Club Parade of Lights: the Main Entrance Channel, Sail Bay and Fiesta Bay portions of Mission Bay.

(b) Effective Dates: These regulations will be effective on the following times and dates:

(1) Shoreline Yacht Club of Long Beach Festival of 1000 Lights: 7 December 1985 from 6:00–10:00 pm.

(2) Huntington Harbor Philharmonic Society Symphony of Lights: 7–8 December 1985 from 4:30–9:30 pm.

(3) Greater Shelter Island Association Christmas Boat Parade: 22 December 1985 from 5:00–9:30 pm.

(4) Pioneer Skipper Boat Owners Association Christmas Boat Parade: 14 December 1985 from 4:30–8:30 pm (Fireworks: 5:30–5:35 pm)

(5) Los Angeles Harbor Department Christmas Afloat Parade: 14 December 1985 from 6:00–8:00 pm.

(6) Newport Beach Area Chamber of Commerce Christmas Boat Parade: 17–22 December 1985 from 6:30–9:30 pm.

(7) Mission Bay Yacht Club Parade of Lights: 21 December 1985 from 6:30–9:00 pm.

(c) Special Local Regulations: All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

Dated: November 5, 1985.

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85-28044 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP San Diego Reg. 85-11]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area within 100 feet (30 meters) of Bravo Pier. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Commanding Officer, Naval Air Station North Island or the Captain of the Port.

DATES: This regulation becomes effective on 14 November 1985. It terminates on 14 March 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive San Diego , CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interests of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The Commanding Officer, Naval Air Station North Island has requested that Captain of the Port, San Diego, California establish a security zone at Naval Air Station North Island Bravo Pier. This request was made to improve security at the location and to prevent vessels from approaching Bravo Pier closer than 100 feet (30 meters) during ammunition handling operations. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commanding Officer, Naval Air Station North Island, to permit entry into this security zone. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.T1187 is added to read as follows:

§ 165.T1187 Security zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 feet (30 meters) of Bravo Pier, bounded by the following points:

(1) Latitude 32°41'51.3" N, longitude 117°13'34.0" W;

(2) Latitude 32°41'51.3" N, longitude 117°13'38.5" W;

(3) Latitude 32°41'45.8" N, longitude 117°13'38.5" W;

(4) Latitude 32°41'45.8" N, longitude 117°13'35.0" W;

(b) *Effective Date:* This regulation becomes effective on 14 November 1985. It terminates on 14 March 1986.

(c) *Regulations:* In accordance with the general regulations in § 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: November 14, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California

[FR Doc. 85-28045 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 85-14]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in San Diego Bay, California, consisting of the water area within 250 yards (229 meters) of U.S. Navy mooring bouy FM19, near the east end of Harbor Island. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on 22 and 27 November 1985, from 0001 to 2359 Pacific Standard Time each date.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication.

Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interests of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will occur on 22 and 27 November 1985. They involve mooring of naval ships at U.S. Navy mooring bouy FM19, shown as bouy "19" near the east end of Harbor Island on Chart 18773. Pleasure vessels routinely anchor in the area around this bouy and render it unavailable to naval vessels while they are anchored there. Naval vessels moored at this bouy can endanger smaller vessels anchored within a 250 yard radius of this bouy. This security zone is intended to protect naval and civilian vessels, and to ensure that this mooring is available to the naval vessel involved. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. In Part 165, a new § 165.T1101 is added to read as follows:

§ 165.T1101 Security Zone: San Diego Bay, California.

(a) *Location:* This security zone consists of the water area within 250 yards (229 meters) of U.S. Navy mooring bouy FM19, near the east end of Harbor Island, San Diego, California.

(b) *Effective Dates:* This security zone is effective on 22 and 27 November 1985, from 0001 to 2359 Pacific Standard Time each date.

(c) *Regulations:* In accordance with the general regulations in 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: November 14, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Digeo, California.

[FR Doc. 85-28042 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CCGD 7-85-44]

Security Zone; Naval Submarine Base Kings Bay, GA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule and correction.

SUMMARY: This document redesignates incorrect section numbering and geographic latitude and longitude coordinates that were inadvertantly listed in units of minutes and fractions of minutes instead of minutes and seconds in the Final Rule published October 15, 1985 (50 FR 41685). The effective date of these regulations is suspended from November 15, 1985 to November 29, 1985 to allow the corrections to be published in the **Federal Register** before the regulation becomes effective and to allow the effective date to coincide with the end of the comment period listed in the previous rule. This action is necessary to ensure correct designation of the security zone regulation.

EFFECTIVE DATE: November 25, 1985, for the suspension of effective date and November 29, 1985 for the revision of § 165.700.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Harry D. Craig, (305) 536-5651.

SUPPLEMENTARY INFORMATION:

List of Subjects in 33 CFR Part 165

Harbors; Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5

2. Section 165.700 is revised to read as follows:

§ 165.700 Security Zone—Naval Submarine Base Kings Bay, GA.

(a) The area within the following coordinates is a security zone, an area enclosed by a line starting at latitude 30°44'55" N, longitude 81°29'39" W; thence to 30°44'55" N, 81°29'18" W; thence to 30°46'35" N, 81°29'18" W; thence to 30°47'02" N, 81°29'34" W; thence to 30°47'21" N, 81°29'39" W; thence to 30°48'00" N, 81°29'42" W; thence to 30°49'07" N, 81°29'56" W; thence to 30°49'55" N, 81°30'35" W; thence to 30°50'15" N, 81°31'08" W; thence to 30°50'14" N, 81°31'30" W; thence to 30°49'58" N, 81°31'45" W; thence to 30°49'58" N, 81°32'03" W; thence to 30°50'12" N, 81°32'17" W; thence following the land based perimeter boundary to the point of origin.

(b) The security zone is necessary for protection of vital United States defense assets located at the United States Naval Submarine Base Kings Bay, Georgia.

(c) No person or vessel may enter or remain in the security zone without the permission of the Captain of the Port Jacksonville, Florida except those persons or vessels operating under the authority of the United States Navy or the United States Coast Guard.

3. Regulations published October 15, 1985 at 50 FR 41685 are suspended until November 29, 1985.

Dated: November 15, 1985.

M. Woods,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 85-28041 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: November 19, 1985.

Harry N. Walters,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective November 20, 1985, 13½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective November 20, 1985, 13 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 20, 1985, 13 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11 centum per annum, effective November 20, 1985, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 11¼ per centum per annum, effective November 20, 1985, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 11¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective November 20, 1985, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 11 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12½ percent per annum. (38 U.S.C. 1811(d) (1) and (2)(A))

[FR Doc. 85-28040 Filed 11-22-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-FRL-2929-2]

Reversion of State Hazardous Waste Management Programs

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of expiration of RCRA interim authorization.

SUMMARY: This notice announces the scheduled expiration of interim authorization in States which have not received final authorization under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. These States received interim authorization under RCRA to operate all or part of the RCRA hazardous waste management program in lieu of EPA operating the Federal program. However, the Hazardous and Solid Waste Amendments of 1984 (HSWA) amend RCRA 3006(c) to provide that interim authorization terminates on January 31, 1986. If a State has not received final authorization by that date, authority to implement the RCRA hazardous waste management program reverts to EPA. EPA must administer the Federal program in that State until such time as the State receives final authorization. This notice identifies the States in which operation of the RCRA program may revert to EPA on January 31, 1986 and EPA's policies for operating the Federal program in those States.

EFFECTIVE DATE: Interim authorization will expire at 1:00 p.m. Eastern Standard Time, on January 31, 1986, for any interim authorized State which has not received final authorization. As of that date, EPA will be responsible for operating the Federal hazardous waste program in those States. The State programs will continue in effect under State legal authorities.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346, or in Washington, DC, at 382-3000 or Martha A. Madison, State Programs Branch (WH-563-B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize States to operate State hazardous waste management programs in lieu of the Federal program. Under RCRA 3006(c)(1), the Agency has the authority to grant interim authorization to State programs that are "substantially equivalent" to the Federal program. Under RCRA 3006(b), EPA grants final authorization to State hazardous waste programs that: (1) Are equivalent to the Federal hazardous waste program; (2) are consistent with the Federal program and other State programs which have received final authorization; and (3) provide adequate enforcement.

Section 3006(c)(1) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides that interim authorization under Section 3006(c)(1) automatically expires on January 31, 1986. On that date authority to administer and enforce the entire RCRA program reverts to the Federal government. Authority to run the RCRA program will return to the State when it obtains final authorization. EPA may not extend the January 31 deadline administratively.

Fifteen States with interim authorization have not received final authorization as of this date. RCRA authority for some of those States is expected to revert to EPA on January 31, 1986. The purpose of this notice is to alert the public about the possible reversion of the RCRA program is those States and to explain EPA's plans for assuming responsibility for those programs. On or about January 31, 1986, EPA will publish a **Federal Register** notice listing those States whose RCRA programs reverted to EPA.

The regulated community should take particular note that beginning January 31, hazardous waste handlers in States whose interim authorization expires will be required by law to comply with the Federal regulations in Title 40 of the

Code of Federal Regulations, Parts 124, 260–265 and 270, as well as the State regulations. (Copies of the Code of Federal Regulations are available for sale in two volumes (Parts 100 to 149 and Parts 190 to 399) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402). The State will continue to implement its State hazardous waste program, as this program remains in effect under State law.

The expiration of RCRA interim authorization in a State poses significant practical problems for EPA, the States, and the regulated community. Because most States are actively pursuing final authorization, reversion of RCRA authority to EPA is likely to be temporary. EPA needs to reconcile its legal responsibility to implement and enforce the Federal RCRA program, the practical impossibility of fully implementing the Federal program for what generally will be a brief period, and the need to minimize conflicts with the States. Thus, EPA intends to administer the program, set priorities and use its enforcement discretion as described below.

First, it is expected that each State whose interim authorization expires will enter into an agreement with EPA to assist EPA in administering the Federal program until the State receives final authorization. These agreements are intended to reduce duplicative Federal and State activities, maximize the efficient use of State and EPA resources, minimize the disruption of existing State hazardous waste programs and reduce confusion in the regulated community. Each agreement will identify the respective responsibilities of both EPA and the State agency in implementing the Federal hazardous waste program. While EPA retains legal responsibility for the Federal program, through the agreement EPA can assign to the State those administrative tasks that the State can legally carry out. The specific administrative tasks to be performed will undoubtedly vary from State to State, but are likely to include such things as the sharing of information and making recommendations to EPA on permit applications.

Second, the Federal RCRA enforcement program, as a matter of enforcement discretion during this period, generally will consider whether State laws and regulations are similar to Federal requirements and whether the State is taking timely and appropriate enforcement actions. Since State programs were required to be substantially equivalent to EPA's program to obtain interim authorization, Federal and State requirements are generally very similar, if not identical, in those areas for which a State has interim authorization. If a State does lack comparable requirements, EPA expects to take direct enforcement actions. For example, some States do not have regulations comparable to the Federal financial responsibility regulations at 40 CFR Part 265, Subpart H. In this case, the Federal government would take the lead role in enforcement. Where a State has comparable authority and is responding to violations of State laws and regulations with timely and appropriate formal enforcement actions, EPA generally expects to defer to State administrative or judicial proceedings during this temporary period. In these circumstances EPA would not initiate a parallel enforcement action to enforce the Federal requirements. However, EPA reserves its right to enforce the Federal requirements at any time. Moreover, the above approach does not create any rights or defenses to an enforcement action.

Third, the length of reversion is a factor which will affect EPA's priorities. In case where the reversion will be relatively short, approximately 90 days or less, it may not be practical or possible for EPA to make the operating changes to implement the reversion of authority. Therefore, implementing such changes in those States will be of lower priority. For example, it would be administratively cumbersome and very burdensome to require the State to move its records and the regulated community to send reports to EPA, only to require records and reports to go to the State again within a few weeks or months. This is particularly true where a State agrees to assume primary responsibility for reviewing reports. Thus, for States reverting for a short period of time (i.e., 90 days or less), EPA will allow and encourage handlers to continue reporting to the States during that period.

Similarly, if program authority is expected to revert for a short period of time, the Region will initiate permit actions jointly with the State to avoid any duplication of effort. EPA does not plan to take independent permit action except where it is feasible to complete the task involved during the period of reversion. When EPA does take action on permits, it will attempt to build upon what the State accomplished when it was authorized. For example, if the State issues a draft permit and then the authorization reverts, EPA may be able to continue the permit process, picking up with the hearing, rather than duplicating the State's efforts.

The States listed below in Groups I and II have interim authorization for all or part of the RCRA hazardous waste program. They have not yet received final authorization and are, therefore, candidates for reversion:

I. States for which a complete application for final authorization has been received, but no tentative determination to grant or deny authorization has been made—

California	Ohio	Washington
Connecticut	Oregon	West Virginia
Maine	Puerto Rico	Wisconsin
New York	Rhode Island	

II. States for which a tentative determination to approve final authorization has been made—

Guam	Indiana
Illinois	Pennsylvania

The States listed in Group II are expected to be authorized by January 31 unless a significant problem surfaces before then. For the Group I States, it is difficult to predict, at this time, what their status will be on January 31. Some States listed in Group I may be authorized either by January 31 or within 90 days after that date. In those States the regulated community will continue to report to the State during the short-term reversion period. However, because each State's authorization status is different and because there are States in Group I which have yet to provide necessary documents, it is not possible to predict when those States will receive final authorization; authorizations for some programs may revert for more than 90 days. The **Federal Register** notice EPA publishes in January will clarify the status of all 15 States, including the expected length of the reversion period and guidance on where reports are to be submitted. If any States listed in Group I are not authorized by January 31 or within 90 days following January 31, they are likely to assist the Region in implementing the Federal hazardous waste program until the time they receive final authorization.

Dated: November 12, 1985.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 85-28035 Filed 11-22-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31, 33, 42, and 43

[CC Docket No. 84-469; FCC 85-581]

Revision of the Uniform System of Accounts for Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: The Commission has determined that generally accepted accounting principles (GAAP) should be incorporated into the proposed Uniform System of Accounts being developed in CC Docket 78-196 to the extent that regulatory considerations allow. The action will bring the telephone carriers accounting systems closer to the accounting which is followed by the great majority of the American business community.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

Report and Order

In the Matter of Revision of the Uniform System of Accounts for Telephone Companies to Accommodate Generally Accepted Accounting Principles (Parts 31, 33, 42, and 43 of the FCC's Rules) [CC Docket No. 84-469].

Adopted: October 31, 1985.
Released: November 14, 1985.

By the Commission.

I. Introduction

1. In a Notice of Proposed Rulemaking (NPRM) released on May 18, 1984, 49 FR 21377 (May 21, 1984), the Commission proposed to revise Parts 31, 33, 42 and 43 of its Rules to accommodate generally accepted accounting principles (GAAP) [1] to the extent practicable.

2. Based on an analysis of the comments received in this proceeding, we have decided to adopt GAAP as proposed in our NPRM with some modifications as discussed in succeeding paragraphs. The amendments described herein will become effective when the revised Uniform System of Accounts (USOA) being developed in CC Docket 78-196 becomes effective.

II. Background

3. In October of 1981, the Commission issued a *Second Supplemental Notice Of Proposed Rulemaking and Order (Second Supplemental Notice)*, 88 FCC 2d 83 (1981), in Docket No. 78-196. In the *Second Supplemental Notice*, we established a federal advisory committee, the Telecommunications Industry Advisory Group (TIAG), and charged it with developing and recommending a revised USOA based generally on financial principles and capable of supporting separate, parallel costing and separations subsystems. Among other things, the TIAG was to develop a recommendation on the extent to which GAAP should be used in a revised USOA.

4. In response to its mandate, on January 20, 1984, the TIAG filed with the Commission its report entitled "Discussion Paper on Application of Generally Accepted Accounting Principles in a Revised Uniform System of Accounts" (Report). Included as a part of the Report are additional comments on the subject by the National Association of Regulatory Utility Commissioners (NARUC), which is an active participant in TIAG activities.

5. In general, the Report recommended that: the USOA provide for compliance with GAAP, although not irrespective of economic effects of regulation; the USOA provide for automatic adoption of future changes in GAAP, absent Commission notice to the contrary; the effects of differing accounting and rate-making practices adopted by various regulatory authorities with respect to the same cost of service components be summarized in the general books of account; and the nonregulated activities, in which a regulated telphone company may be involved, be subject to GAAP consistent with nonregulated enterprises.

6. Additionally, the Report identified 21 accounting practices required by the current USOA, 47 CFR Parts 31 and 33, that differ from GAAP. Only three of these changes—accounting for income taxes; capitalized leases; and compensated absences—would result in a significant revenue requirement impact if adopted. The Report further recommended that the Commission initiate a separate rulemaking proceeding to address the full adoption of GAAP in the revised USOA. On May 10, 1984 the Commission issued a notice of proposed rulemaking to address the Report's recommendations on GAAP.

III. Summary of Proposal

7. The NPRM proposed to adopt the concept of GAAP as a whole with added emphasis to be placed on the economic effects of regulation and to provide for adoption of future changes to GAAP subject to a Commission review period of 90 days. We also proposed reserving the Commission's right to determine materiality instead of adopting the GAAP definition of materiality.

8. Further, the NPRM proposed adding three accounts in the USOA to record the deferred charges and credits and the net income effects arising from differing accounting and ratemaking practices adopted by various regulatory bodies. The NPRM also proposed to refrain from applying regulatory accounting rules to the nonregulated activities of regulated carriers.

9. In addition, we proposed to adopt GAAP with respect to early extinguishment of debt; investment in plant; account 232—station connections—(inside wiring); valuation of inventories held for resale; variable payment contracts; directory revenues and expenses; sales of embedded terminal equipment; investment in common stock of affiliates; pension costs and deferred compensation arrangements; prior period adjustments; extraordinary items; convertible debt and debt issued with stock purchase warrants; business combinations; treasury stock; accounting for contingencies; security investments other than common stock of affiliates; investment tax credits; and capitalizing interest during construction. We did, however, request additional comments on interest during construction; pension costs; prior period adjustments and extraordinary items; and contingencies.

10. Finally, we proposed to adopt GAAP in the areas of normalization,[2] capitalized leases and compensated absences subject to the satisfactory resolution of the issues and questions concerning their revenue requirement impact.

[1] GAAP is that common set of accounting concepts, standards, procedures and conventions which are recognized by the accounting profession as a whole and upon which most nonregulated enterprises base their external financial statements and reports. It directs the recording of financial events and transactions and relates to how assets, liabilities, revenues and expenses are to be identified, measured, and reported. In very broad terms, these principles can be summarized as requiring that assets and liabilities be recorded at historical cost; that revenue be realized when the earning process is complete and an exchange transaction has occurred; that costs be matched with the revenues they helped to generate; that disclosure be full and adequate; that accounting principles be applied consistently between accounting periods; and that accounting data be objectively determined and verifiable.

[2] Our decision with respect to normalization in this Order will have no effect on the treatment of taxes in the *Pole Attachment Proceedings*.

IV. Summary of Comments

11. Interested parties were invited to file comments on or before June 25, 1984, and reply comments on or before July 10, 1984. Comments were received from Colorado Public Utilities Commission (CPUC); Continental Telecom Inc. (Contel); Florida Public Service Commission (FPSC); GTE Service Corporation (GTE); Idaho Public Utilities Commission (IPUC); International Communications Association (ICA); Kentucky Public Service Commission (KPSC); Michigan Public Service Commission (MPSC); New York State Department of Public Service (NYDPS); Office of Consumer Advocate, Commonwealth of Pennsylvania (OCA-PA); United States Telephone Association (USTA); and United Telephone System, Inc. (UTS). Comments and reply comments were received from American Telephone and Telegraph Company (AT&T); BellSouth Corporation (BellSouth); Southern New England Telephone Company (SNET); and The Operating Telephone Companies (OTCs).[3] Reply comments were also received from Centel Corporation (Centel); and The Ameritech Operating Companies (Ameritech).[4] Comments were received after the comment and reply comment period expired from Arthur Andersen & Co. (Arthur Andersen). Since no objections were made to this late filing of comments we have decided to take them into consideration in this proceeding.

12. All respondents, except one, agreed that the new USOA should accommodate GAAP. They differ, however, as to the extent to which individual aspects of GAAP should be applied to the majority of issues set forth in the NPRM. The areas of concern were: (1) Whether the USOA should rely on the Financial Accounting Standards Board (FASB)[5] Statement No. 71 in accommodating GAAP; (2) whether future changes to GAAP should be adopted automatically; (3) whether the GAAP concept of materiality should be incorporated in the USOA; (4) whether accounts for jurisdictional differences should be included in the USOA; (5) whether nonregulated activities should be accounted for pursuant to GAAP for nonregulated entities; (6) whether interest during construction should be capitalized on both debt and equity funds or debt funds solely; (7) whether pension expenses should be accrued when the amounts are not funded; (8) whether the FCC should review unusual items; (9) whether the USOA should allow carriers to recognize contingencies; (10) whether the USOA should allow full normalization accounting for all tax timing differences; (11) whether the USOA should allow carriers to capitalize leases; and (12) whether the USOA should require carriers to accrue for compensated absences.

Adoption of GAAP and Reliance on FASB 71.

13. The major issue raised in the comments deals with the extent to which the USOA should rely on FASB 71 in accommodating GAAP.[6] CPUC, FPSC, KPSC, MPSC and NYDPS all favor GAAP with heavy emphasis on FASB 71. In support of this position, CPUC, FPSC and MPSC cite the fact that FASB 71 gives the regulatory body the option of deciding on a case-by-case basis what accounting treatment is appropriate, especially when there could be a change in the cost of utility service. NYDPS believes that the USOA must fully recognize FASB 71 because in its opinion the accounting required of regulated enterprises should reflect the actual ratemaking policies under which companies operate; regulatory accounting practices depart from GAAP in many instances due to the fact that GAAP is not relevant to regulated entities and failure to recognize FASB 71 would distort the proper accounting and ratemaking policies applied to regulated utilities. Additionally, NYDPS states that increased competition is not a justifiable reason for the wholesale adoption of GAAP without recognition of regulatory policies.

14. AT&T, BellSouth, Contel, GTE, OTCs, SNET, USTA and UTS, on the other hand, oppose substantial reliance on FASB 71 in the new USOA. AT&T, GTE, OTCs, USTA and UTS believe that FASB 71 is not relevant in the competitive environment because prices must be based on market conditions. AT&T, BellSouth and OTCs also state that GAAP should be adopted for both accounting and ratemaking purposes because regulators cannot guarantee full cost recovery in today's environment.

15. Other reasons given to support GAAP absent FASB 71 were consistency and comparability between regulated and nonregulated companies (AT&T, Arthur Andersen, SNET, USTA and UTS); better measurement of financial performance and proper matching of revenues and expenses (AT&T, Arthur Andersen and OTCs); and, the easing of both regulatory and administrative burdens (Contel).

16. AT&T believes that both interexchange carriers and regulated monopoly carriers should be permitted to adopt GAAP on a flash cut basis for the 18 changes in the NPRM which have negligible revenue requirement impacts. In addition, AT&T states that GAAP changes which could have significant revenue requirement impacts should also be adopted for interexchange carriers for ratemaking and regulatory accounting purposes, with an appropriate transition mechanism. The transition would be accomplished by applying GAAP to prospective amounts and phasing in GAAP with respect to embedded deferred amounts of taxes and compensated absences over a period of 5 years. The phasing in of embedded amounts in the revenue requirements would provide a reasonable opportunity for interexchange carriers to recover legitimately incurred costs in the provision of telecommunications services to the public.

17. BellSouth and the OTCs, on the other hand, state that GAAP should be applied, absent FASB 71, only to prospective amounts. They feel that prospective application is best so as to guarantee the recovery of deferred expenses in future revenue streams.

18. Several respondents, while favoring the adoption of GAAP absent FASB 71 as the ultimate goal, couched their comments in such a way as to accommodate FASB 71 if the Commission were to favor its embodiment in the USOA. Contel and USTA state that FASB 71 could be accommodated on a short-term basis but

[3] The Operating Telephone Companies include the following Bell Operating Companies: the Bell Telephone Company of Pennsylvania; the Chesapeake and Potomac Telephone Companies; the Diamond State Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company Incorporated; Michigan Bell Telephone Company; the Mountain States Telephone and Telegraph Company; Nevada Bell; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; Northwestern Bell Telephone Company; Pacific Bell; Pacific Northwest Bell Telephone Company; Southwestern Bell Telephone Company; and Wisconsin Bell.

[4] The Ameritech Operating Companies are comprised of Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; the Ohio Bell Telephone Company; and Wisconsin Bell, Inc.

[5] The Financial Accounting Standards Board is the main body which promulgates accounting standards for general purpose financial statements. Other standard setting bodies are academia and the Securities and Exchange Commission.

[6] Statement of Financial Accounting Standards No. 71 (FASB 71) "Accounting for the Effects of Certain Types of Regulations" continues the requirement that general purpose financial statements of regulated enterprises conform to GAAP, with appropriate applications of these principles to reflect the economics of the ratemaking process (when the conditions of probable recovery are met).

should be eventually phased out for much of the same reasons mentioned previously. Arthur Andersen suggests applying FASB 71 only when the circumstances warrant application; BellSouth recommends recording differences caused by FASB 71 in jurisdictional accounts; and SNET states that FASB 71 should not be incorporated into the book of accounts but only in external financial reports.

19. As mentioned earlier, only one respondent opposed the adoption of GAAP in any form in the USOA. That respondent was OCA–PA, which opposes GAAP because the current USOA has worked well without GAAP; GAAP based financial statements are already available from other sources; GAAP will not fulfill any of the seven functions the original NPRM sought to address (NPRM at p.2); and, the ratepayers would experience adverse effects from adoption through increased rates.

20. In their reply comments, AT&T, Ameritech, BellSouth and OTCs support the adoption of GAAP absent FASB 71. Their reasons are, for the most part, the same as those espoused by the commenting parties in favor of this position.

21. Both Ameritech and the OTCs in their reply comments oppose the state commissions desire to rely on FASB 71 in the new USOA. Ameritech states that the concerns of the state commissions over the effect of GAAP on the cost of service are really concerns over the pricing of service in the new competitive environment. It claims that in this environment, costs must be recovered from cost causers because the future holds no guarantees. Ameritech believes that GAAP merely recognizes the realities of the new competitive environment. The OTCs contend that the maintenance of the status quo as urged by the state commissions is founded on the assertion that rulemaking should determine accounting and ignores the economic reality of the changes taking place in the telecommunication marketplace.

22. BellSouth states in its reply comments that, contrary to NYDPS' assertion that GAAP is sometimes not relevant to regulated entities, the competitive marketplace makes the accounting methods followed by nonregulated businesses very relevant to regulated businesses.

23. The OTCs in their reply comments object to AT&T's position that GAAP be applied to interexchange carriers only. They believe that this would promote inconsistent treatment among carriers and would cause problems for carriers such as Contel, GTE, OTCs and UTS which have both exchange and interexchange operations. Therefore, the OTCs restate their belief that, to the extent GAAP is adopted by the Commission, it should be applied to all carriers so that uniform accounting standards are maintained in the industry.

24. AT&T, in its reply comments, reiterates its belief that interexchange carriers should be allowed to adopt GAAP absent the effects of regulation as soon as possible. It states that the standards applicable to regulated monopoly firms are not appropriate for competitive carriers and that for competitive carriers the marketplace requires that costs be recognized as incurred and not deferred to future periods so that the carrier can have the opportunity to fully recover its costs of supplying service. AT&T also states in its reply comments that in response to the need for a gradual, cautious approach to implementing GAAP for monopoly carriers, the Commission should adopt the recommendations with negligible impact for all carriers while delaying implementation for monopoly carriers of those recommendations with significant ratemaking impact. Monopoly firms would implement the latter recommendations when market forces have become viable to assure that the public interest is protected. While AT&T admits that this will cause interexchange and exchange carriers to be on different accounting bases, it sees no need for concern since AT&T itself accounted for compensated absences differently than the rest of the telecommunications industry for many years with no ill effect.

25. AT&T further states that it opposes the position of those parties favoring only the prospective application of GAAP. By applying GAAP only to prospective amounts, the economic effects of regulation will continue to be recognized almost indefinitely with respect to embedded deferred amounts. AT&T believes that, while this may be an acceptable approach for local exchange carriers, interexchange carriers should apply GAAP to both prospective and embedded amounts, with the embedded amounts being phased into the revenue requirements over a five year transition period.

26. AT&T further submits in its reply comments that its analysis of the revenue requirement impacts of implementing GAAP over a five year period shows the full estimated impact on the interexchange segment of the industry since the other interexchange carriers already follow GAAP. In addition, AT&T maintains that the revenue requirement impacts of adopting GAAP for interexchange carriers would be only a fraction of the impact that would result from applying GAAP for all carriers and that adopting GAAP for interexchange carriers would not affect local service rates.

Automatic Adoption of Future GAAP Changes.

27. The majority of respondents are concerned with the proposal to implement changes to GAAP automatically, subject to Commission review. CPUC, FPSC, IPUC, KPSC, MPSC and NYDPS either are opposed to automatic changes or want the proposal modified because it does not include a provision for state review of GAAP changes. These parties feel that the state commission should have the option of adopting a GAAP change only after considering all aspects of the change including its impact on the cost of service and the economic effects of regulation.

28. GTE and NYDPS object to the 90 day (60 day veto period, 30 day pre-implementation period) review period proposed in the NPRM. GTE believes that the 30 day pre-implementation period should be dropped because it may not be appropriate in all circumstances. NYDPS, on the other hand, favors a 180 day review period to provide parties more time to analyze the effects of a change.

29. BellSouth, OTCs and SNET oppose prior review of GAAP changes by the Commission opting instead for automatic adoption as the TIAG Report recommends. The OTCs and SNET argue that the Commission's proposal is impracticable and burdensome and would result in the USOA never being brought into conformance with GAAP. The OTCs also say that it is self-defeating to adopt GAAP and then turn around and ignore future changes either totally or on an individual carrier basis. BellSouth argues that the regulatory process should not extend the accounting system lead time needed to implement changes to GAAP.

30. Several respondents also recommend, regardless of the FCC prior review issue, that the Commission's implementation date coincide with the FASB effective date of the GAAP change. Arthur Andersen, BellSouth, GTE and OTCs state that the FASB provides enough lead time before implementing a change for the Commission to evaluate its effects prior to its being made effective.

31. OCA–PA, while opposing automatic adoption of GAAP changes, states that if the Commission approves this proposal it should reaffirm the

concept that USOA provisions do not bind state regulators in the rate setting process.

32. In their reply comments, Ameritech, BellSouth, OTCs and SNET support the views of those respondents favoring automatic adoption of GAAP changes without prior review by the Commission. The OTCs do observe that, contrary to the NPRM and IPUC's assertion, automatic adoption of GAAP changes does not delegate regulatory authority to some other entity but merely removes the administrative burden of a formal or informal proceeding on each GAAP change. In addition, the OTCs state that a 60 day review period would be acceptable if the period began on the date the FASB issues a new pronouncement.

33. Finally, AT&T restates its comment position that interexchange carriers should be permitted to implement GAAP changes automatically at the end of the 90 day review period regardless of the impact on revenue requirements.

Materiality

34. The NPRM proposed to reserve the Commission's right to determine materiality rather than relying on the GAAP definition of materiality. GAAP defines materiality as "the magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement". Three respondents, namely FPSC, GTE and MPSC, support the NPRM proposal which would add provisions in the new USOA so that when circumstances indicate that a GAAP-related accounting decision may have unanticipated ratemaking implications, the accounting would be referred to the Commission for its scrutiny. GTE states that FCC oversight would facilitate the goal of consistent application of GAAP. FPSC and MPSC favor this approach because no general standard on materiality can take into account all situations and materiality judgments can only be made after reviewing all the relevant facts.

35. The majority of parties, however, oppose the NPRM in this area insofar as it would eliminate the GAAP definition of materiality. AT&T, Contel, OTCs, USTA and UTS state that materiality cannot be defined more objectively than it is in the current GAAP definition because it is situation specific and therefore cannot be quantified. BellSouth, OCA–PA, OTCs and SNET also argue that it is contradictory to revise the USOA to conform to GAAP and then drop one of its most important concepts. Furthermore, BellSouth and the OTCs contend that the Commission's proposal is impractical and would usurp management's authority since virtually any accounting decision can have ratemaking implications, and therefore, all decisions would be subject to FCC review.

36. In its comments, Arthur Andersen states that the Commission should not try to define materiality but, instead, should establish a materiality threshold such as a percent of total revenues or a dollar limit.

37. Finally, CPUC favors the SEC's policy statement on materiality [7] which focuses on internal control systems as being the definition the Commission should adopt in the new USOA. CPUC feels that this definition will capture an item that is not material under the GAAP definition but would be material under the SEC definition because it may be of significant public concern.

38. In their reply comments, Ameritech, BellSouth, OTCs and SNET state that the Commission should not eliminate the concept of materiality but, instead, should adopt the GAAP definition of materiality. BellSouth, OTCs and SNET contend that the Commission has received no support in the comments to deviate from the GAAP definition.

Jurisdictional Differences

39. The majority of respondents favor the establishment of accounts to record the effects arising from differing accounting and ratemaking practices adopted by various regulatory authorities. MPSC and NYDPS believe that the jurisdictional accounts will provide useful information as to revenue requirement impacts of deviations in accounting and ratemaking practices adopted by various regulatory authorities. MPSC, NYDPS and AT&T observe that the implementation costs of the jurisdictional accounts should be minimal since carriers currently maintain side records for jurisdictional ratemaking differences. CPUC concurs with the proposal but states that any attempt at coordinating accounting between jurisdictions would end up a waste of time and effort. Finally, BellSouth, while favoring jurisdictional accounts, suggests a different approach in this area. Under the BellSouth proposal, all transactions would initially be recorded pursuant to GAAP absent regulation. Thereafter, any deviations from non-regulated GAAP mandated by Federal or state regulatory authorities would be recorded in six jurisdictional accounts (3 Federal and 3 state). BellSouth feels that its proposal allows the FCC to monitor its own as well as all state deviations from GAAP and maintains that the annual report each regulatory agency receives will show the impact on both present and future customers. In addition, it will facilitate the elimination of side records and full consideration can be given to the public interest in the ratemaking process.

40. Contel, GTE, USTA and UTS are opposed to the establishment of jurisdictional accounts in the revised USOA. Contel and USTA contend that the proposal would add additional recordkeeping burdens to the carriers and that the data generated is of questionable value and serves no regulatory purpose. UTS states that jurisdictional differences do not belong in the books of account but instead in the external financial statements per FASB 71. GTE, on the other hand, favors standardized accounting and ratemaking practices in all jurisdictions (both Federal and state) rather than the jurisdictional accounts proposed. GTE feels that standardization would reduce administrative costs, would provide a better audit trail and would facilitate the execution of the Commission's public interest responsibilities. Finally, GTE states that it can live with the jurisdictional accounts on a short term basis until standardization is achieved through the adoption of the revised USOA in all regulatory jurisdictions.

41. In their reply comments, the OTCs and SNET support the establishment of jurisdictional accounts in the revised USOA. Contrary to the suggestion of Contel, USTA and UTS that the accounts are not needed, the OTCs believe that the accounts will encourage the movement toward standardized accounting and ratemaking in all jurisdictions. Ameritech and the OTCs

[7] The SEC statement reads, in part: Materiality, while appropriate as a threshold standard to determine the necessity for disclosure to investors, is totally inadequate as a standard for an internal control system. It is too narrow—and thus too insensitive—an index. For a particular expenditure to be material in the context of a public corporation's financial statements—and therefore in the context of the size of the company—it would need to be, in many instances, in the millions of dollars. Such a threshold, of course, would not be a realistic standard. Procedures designed only to uncover deficiencies in amounts material for financial statement purposes would be useless for internal control purposes. Systems which tolerated omissions or errors of many thousands or even millions of dollars would not represent, by any accepted standard, adequate records and controls. The off-book expenditures, slush funds, and questionable payments that alarmed the public and caused Congress to act, it should be remembered, were in most instances of far lesser magnitude than that which would constitute financial statement materiality.

in their reply comments also agree with GTE's position that jurisdictional accounts should be adopted only as an interim measure until the USOA is adopted by all jurisdictions. BellSouth in its reply comments restates its support for 6 rather than 3 jurisdictional accounts with all transactions being recorded at their origin according to GAAP absent regulation.

Nonregulated Activities

42. The NPRM addressed the question of how accounting principles should be applied to nonregulated activities but stated a tentative view that accounting principles applied to nonregulated activities are within the purview of management discretion as long as they do not or will not affect rates. The majority of respondents feel that nonregulated activities are solely within the purview of management and therefore should not be subject to the USOA. MPSC and OCA–PA, however, believe that the USOA should be applied to all activities whether they are regulated or not. MPSC states that applying the requirements of the USOA to a carrier's nonregulated activities will provide comparable financial information and will prevent the regulated activity from subsidizing the nonregulated activity. OCA–PA argues that regulators need not only specification of the accounting provisions for nonregulated activities but also a clear demarcation between the regulated and nonregulated entities. In addition, OCA–PA maintains that common financing of regulated and nonregulated activities ties the operations together regardless of the nature of the business. Finally, FPSC states that accounting for nonregulated activities should be left to the various individual regulatory bodies.

43. In their reply comments, Ameritech, BellSouth, OTCs and SNET state that accounting for nonregulated activities should be left to the purview of management. Ameritech also maintains that the state concerns about cross-subsidization are unfounded since the FCC's authority over accounting for regulated activities is sufficient to prevent unpermitted cross-subsidization.

Interest During Construction

44. The NPRM proposed the capitalization of imputed interest on equity funds, in addition to interest on debt as is currently allowed by the Commission's rules, but requested parties to comment on the possibility of capitalizing interest during construction based only on the debt component, in accordance with GAAP.

45. Three respondents, CPUC, KPSC and MPSC favor the current approach to the capitalization of interest during construction. KPSC opposes the GAAP approach because of the material ratemaking impact that would result if interest is capitalized only on debt. It states that the annual increase in rates to customers served by South Central Bell Telephone Company of Kentucky and General Telephone of Kentucky would be $1.77 and $2.71 per customer, respectively. In support of its position that the current approach should be maintained, MPSC states that the current USOA properly measures the costs of financing construction projects and reflects the regulatory process used in determining the amount to be capitalized. MPSC also maintains that the current approach encourages utilities to employ internally generated funds first before seeking external financing at a higher cost. Finally, MPSC states that the current approach is the only way to remedy the overstatement of interest and the understatement of current net income resulting from the use and recognition of current funds to finance plant which is not yet a part of operations.

46. The majority of respondents support the GAAP approach to capitalizing interest during construction per Statement of Financial Accounting Standards No. 34 "Capitalization of Interest Cost" (FASB 34).[8] GTE states that it sees no reason to revert back under the "FASB 71 umbrella" on this issue. The OTCs, SNET, USTA and UTS, while favoring the application of FASB 34 to interest during construction also, suggest that the Commission include all plant under construction in the rate base. The OTCs and UTS submit that including all plant under construction in the rate base would negate the question of which component to include in the calculation of interest during construction since capitalization would no longer be necessary under the provisions of FASB 34. The OTCs and SNET also state that, absent the inclusion of all plant under construction in the rate base, they could not support the GAAP approach to interest during construction because the opportunity costs of equity capital foregone during construction would no longer be recoverable.

47. In their reply comments, Ameritech, BellSouth, OTCs and SNET support the adoption of FASB 34 and the inclusion of all plant under construction in the rate base. Ameritech states that this will eliminate the need to capitalize interest during construction. Both Ameritech and the OTCs maintain that the inclusion of plant under construction in the rate base will permit the recovery of interest on a current rather than deferred basis. AT&T in its reply comments suggests that interexchange carriers be permitted to adopt FASB 34 immediately and monopoly exchange carriers be permitted to do so when the competitive marketplace dictates that adoption is appropriate.

Pension Costs

48. The majority of respondents favor the proposal in the NPRM which would require accruals of pension expense which are actuarily determined, even if such amounts are not funded. They observe that most carriers are already in conformance with the GAAP provisions. FPSC and MPSC desire Commission authorization before a carrier can record unfunded pension expenses.

49. In their reply comments, BellSouth and the OTCs oppose the FPSC and MPSC recommendation that carriers receive Commission approval prior to booking unfunded pension expenses.

Unusual Items

50. The objections to this item are based on the provision which would require carriers to submit unusual items for prior review and approval by the Commission before being booked as prior period adjustments or extraordinary items. BellSouth, Contel, OTCs and SNET oppose the prior review provision because of the delays it would cause in the normal accounting process. USTA contends that the provision is regulatory overkill and a waste of Commission resources. UTS, on the other hand, submits that this provision is unduly burdensome and unnecessary since the GAAP guidelines are sufficient.

51. In their reply comments, Ameritech, BellSouth, OTCs and SNET reiterate their opposition to the prior review of unusual items by the Commission. The reasons cited were the same as those given by the parties commenting on this issue.

Contingencies

52. Eight of the commenters support recognizing contingencies under certain limited conditions prescribed in Statement of Financial Accounting Standards No. 5 "Accounting for Contingencies" (FASB 5). These conditions occur when it is probable that an asset has been impaired or a liability has been incurred and the amounts of the loss can be reasonably

[8] FASB 34 establishes the standards used for capitalizing interest cost in determining the historical cost of acquiring certain assets.

estimated. CPSC, MPSC and OCA–PA oppose recognizing contingencies under the provisions of FASB 5. CPSC states that recognizing a liability could lead to misunderstanding in rate case costs of service and instead suggests handling contingences in the footnotes to the financial statements. MPSC contends that FASB 71 is more appropriate than FASB 5 because the regulator may direct a carrier to include the contingency in allowable costs for ratemaking purposes even if it does not meet the criteria for recognition under FASB 5. OCA–PA argues that GAAP does not necessarily reflect the operating realities present for rate setting.

53. In their reply comments, Ameritech, BellSouth, OTCs and SNET support recognizing contingencies according to the provisions of FASB 5. Both Ameritech and the OTCs disagree with CPUC's position that contingencies should only be disclosed in the footnotes to the financial statements. Ameritech states that failure to recognize those contingencies deemed material by FASB 5 would most likely result in distortions in rate case results. The OTCs submit that contingent liabilities are current costs of operation, and therefore, should be recognized in financial reports as well as ratemaking. To counter MPSC's suggestion that FASB 71 is more appropriate than FASB 5, the OTCs state that contingent liabilities imposed by regulators would be recognized under FASB 5.

Normalization Accounting

54. Nine respondents favor the adoption of normalized accounting for all tax timing differences (see paragraphs 100–106, *infra*, for a discussion of the normalization method versus the flow through method). BellSouth, GTE, OTCs and SNET, while favoring normalization, do object to the use of the net of tax method of applying interperiod tax allocation. Specifically, these parties disagree with the relocation of deferred taxes associated with book-tax timing differences to the plant investment series of accounts (net of tax method) for presentational purposes because in their view, this treatment is not prescribed under GAAP in APB 11.[9] Instead, these parties support the "deferral method" which is the prescribed method under GAAP and which would reflect the deferred tax amounts as a deferred credit on the balance sheet. The OTCs contend that the net of tax method distorts the measurement of assets and liabilities. BellSouth argues that the net of tax method oversimplifies the relationship between depreciation, taxes and the valuation of assets and will result in financial statements that are less comparable to nonregulated entities. In support of the deferral method, the OTCs state that it provides comparability among public companies.

55. BellSouth, GTE, OTCs, USTA and UTS suggest that if normalization is adopted it be applied on a prospective basis. The OTCs feel that prospective application will help alleviate the revenue requirement impact effect in the early years of adoption. Along with the prospective application of normalization, BellSouth, GTE and UTS suggest keeping embedded deferred taxes under the flow through method until the deferral reverses itself. BellSouth states that this will insure proper reimbursement of tax expense through the ratemaking process. AT&T supports prospective application of normalization for interexchange carriers for both accounting and ratemaking purposes, with embedded deferred amounts phased in and recognized in the revenue requirements over a 5 year transition period.

56. Finally, FPSC, while favoring normalization, argues that state regulators should be given the discretion to handle the matter consistent with their established policy. Several states are opposed to the adoption of normalized accounting for all tax timing differences. IPUC, KPSC and OCA–PA object to normalization on the basis that its adoption would increase revenue requirements. CPUC favors the flow through method of accounting for taxes and along with MPSC believes that adoption should be optional and left to the discretion of the individual states. NYDPS, on the other hand, argues that there is no need to provide regulated firms with the additional cash flow benefits of normalization. NYDPS also states that the Commission should defer action on this issue since the FASB has the area under consideration and may well promulgate new standards on the allocation of taxes. NYDPS further states that if normalization is adopted, it should be phased in over a five year transition period.

57. In their reply comments, AT&T, Ameritech BellSouth, OTCs and SNET restate support for the adoption of normalized accounting for all tax timing differences. Ameritech agrees with the comments of BellSouth that normalization will result in a more thorough and consistent matching of revenues and expenses and, thus, facilitates the proper assignment of costs to cost-causing customers. Ameritech also states that normalization will result in improved debt coverage, improved quantity of reported earnings, improved cash flow and lower costs of financing. AT&T, in its reply comments, feels that interexchange carriers should be permitted to adopt normalization immediately and monopoly exchange carriers should be permitted to do so when the competitive environment dictates. AT&T suggests that normalization be applied to prospective amounts of taxes with embedded deferred taxes being phased in over a 5 year transition period. The reply comments of BellSouth and the OTCs recommend that the states' arguments against normalization be rejected on the basis that the states fail to recognize the important aspects regarding normalization as outlined in BellSouth's comments. BellSouth and the OTCs further state that normalization should be adopted on a prospective basis to minimize the revenue requirement impact expected in the early years of transition. Finally, Ameritech, BellSouth, OTCs and SNET recommend that the net of tax method not be adopted since it does not conform with GAAP per APB No. 11.

Capitalized Leases

58. Eight respondents favor the adoption of accounting for leases in accordance with Statement of Financial Accounting Standards No. 13 "Accounting for Leases" (FASB 13). CPUC, FPSC, MPSC and NYDPS, on the other hand, oppose the capitalization of leases as proposed in the NPRM. CPUC states that leases should be classified per FASB 13 for reporting purposes only and should be treated as an operating lease for ratemaking purposes. MPSC favors the FASB 71 treatment for leases. Under that method the lease payments included in allowable costs are equal to the combined amount of the capitalized leased asset and the interest on the leased obligation over the term of the lease. NYDPS argues that the Commission should adopt capitalization of leases only if the revenue requirement impact studies support the tentative conclusion that such impacts will be minimal. FPSC believes that lease payments should continue to be treated as expense and that if the Commission does allow capitalization it should limit amortization to the rental expense currently allowed in the USOA. Finally, the OTCs, while favoring the adoption of FASB 13 in the revised USOA, claim that there are two errors in the TIAG report. The first is the use of original

[9] APB 11, "Accounting for Income Taxes" was promulgated by the Accounting Principles Board, a predecessor to the Financial Accounting Standards Board.

cost as a valuation amount to record a capital lease. The second is the fact that the proposed USOA does not provide accounts for "lessor accounting" in a capital lease transaction.

59. In their reply comments, Ameritech, AT&T, BellSouth, OTCs and SNET support capitalizing leases per FASB 13. Ameritech, BellSouth and the OTCs oppose CPUC's recommendation to treat all leases as operating leases for ratemaking. They observe that the data submitted with the carrier comments indicates that the revenue requirement impact of implementing FASB 13 is minimal. Most state regulators agree. The OTCs also restate their comment position that accounts should be established and instructions should be included in the USOA to handle lessor accounting for capital leases.

60. AT&T in its reply comments states that interexchange carriers should be permitted to apply FASB 13 immediately and monopoly exhange carriers should be permitted to do so only when the marketplace is appropriate for adoption.

Compensated Absences

61. The majority of commenters favor the adoption of GAAP with respect to compensated absences (vacation, sick leave, etc.). GAAP requires the recording of a liability associated with such benefits as they are earned rather than expensing them when they are paid. The NPRM also noted that substantially all carriers except AT&T (per-divestiture) were already consistent with GAAP. However, two commenters, namely KPSC and NYDPS, are opposed to the proposal in the NPRM. KPSC argues against change in this area on the basis that there is too much pressure on local rates at this time to allow AT&T to change its accounting method. NYDPS contends that the initial adjustment necessary to switch to the accrual method would give rise to a substantial revenue requirement increase. NYDPS also states that the GAAP standard for compensated absences is unnecessarily conservative for regulated firms with a long history of institutional existence that can be expected to continue to exist indefinitely in the future. Therefore, NYDPS recommends that AT&T be allowed to continue its current practice in accounting for compensated absences. Finally, if the Commission does adopt GAAP for compensated absences, NYDPS suggests that it be implemented gradually with incremental liabilities being accrued each year and the initial catch-up liability being deferred indefinitely.

62. In their reply comments, Ameritech, AT&T, BellSouth, OTCs and SNET support the adoption of the accrual basis of accounting for compensated absences. BellSouth and the OTCs state that the accrual basis will improve comparability of financial reports and that the revenue requirement impact can be minimized by amortizing the initial adjustment over a 3–5 year period. After the initial amortization period, BellSouth and the OTCs believe the reduction in working capital will reduce revenue requirements and result in substantial savings. BellSouth and the OTCs also recommend in their reply comments that unamortized amounts of compensated absences be included in the rate base to reflect the cost of compliance.

63. Ameritech, BellSouth and the OTCs in their reply comments oppose the recommendation of NYDPS that the initial catch up adjustment be deferred indefinitely. They maintain that this action would not properly reflect the carriers' costs of operation and would result in an immediate write off of such costs without corresponding revenues.

64. AT&T in its reply comments suggests that interexchange carriers be allowed to apply GAAP to compensated absences immediately and monopoly exchange carriers be allowed to do so only when the marketplace dictates that adoption is appropriate.

Implementation

65. One other issue was raised in the comments. AT&T and Arthur Andersen both state that the adoption of GAAP into the USOA should take effect as soon as possible rather than when the other revisions of the USOA are effective as proposed in the NPRM. AT&T and Arthur Andersen believe that Part 31 will require only modest changes to accommodate GAAP and that delays in implementation would serve only to delay the recovery of costs for ratemaking purposes.

V. Discussion

Adoption of GAAP and Reliance on FSAB 71

66. We proposed that the revised USOA embrace the concept of GAAP as a whole but that added emphasis be brought to bear on the question of the economic effects of regulation. In addition, we requested parties to comment on the amount of consideration that FASB 71 should receive in the revised USOA. Only one party objected to incorporating GAAP into the revised USOA. The remaining comments were divided, however, as to the extent to which FASB 71 should be relied on in the revised USOA.

67. We do not agree with OCA–PA that the current USOA has worked well or that this proceeding does not satisfy any of the seven functions that the original NPRM sought to address. The July 1978 Notice in CC Docket 78–196 recongized that the current USOA does not respond to the current technological environment. While this proceeding alone does not satisfy the seven original functions stated in CC Docket 78–196, its adoption, along with the revised USOA, and other proceedings emanating from CC Docket 78–196 will satisfy those seven functions (NPRM at p. 2; 49 FR 21378, May 21, 1984.).

68. We also do not agree with the states' position that the revised USOA should rely heavily on FASB 71. We are not persuaded by the arguments presented that FASB 71 will present the actual ratemaking practices under which companies operate, or that it provides regulatory authorities with the option of deciding on a case by case basis what accounting treatment is appropriate. In our opinion, FASB 71 is mainly a reporting convention that becomes relevant only after the regulator has directed a regulated company to account for an item differently than GAAP. Consequently, if regulators prescribe accounting standards that differ from the GAAP standards and the conditions of probable recovery are met, FASB 71 would permit carriers to include the deviation in its published financial statements. As we see it, FASB 71 requires carriers to modify published financial statements to agree with accounting required by regulators. We do not see it as having a bearing or driving regulators to rely on FASB 71, nor do we see it as having an effect on the FCC's accounting system.

69. We also do not agree with AT&T's position that GAAP should be adopted immediately by interexchange carriers and by exchange carriers only when the marketplace dictates (especially with respect to the recommendations having significant revenue requirement impacts).[10] This would promote inconsistent treatment among carriers, as the OTCs note, and would also present comparability problems with respect to those carriers having both exchange and interexchange operations. In effect, these carriers could apply GAAP with respect to their interexchange operations and not apply GAAP to their exchange operations. To promote the needed consistency and uniformity industrywide to properly

[10] This comment of AT&T cuts across the various issues discussed individually in this order. To the extent that it does, it will not be addressed further in connection with our separate consideration of each issue.

carryout our regulatory responsibilities, we are applying the same accounting standards to all carries.

70. We are adopting GAAP into the revised USOA for accounting purposes to the extent regulatory considerations permit. The ratemaking status of the changes in accounting will be determined in subsequent rate cases. In addition, in order to maintain control over the USOA so that uniformity is maintained for all carriers, the Commission will select the accounting method carriers are to use under GAAP when GAAP permits several accounting options. The carriers will use the accounting method selected by the Commission unless we grant them a waiver to do otherwise.

Automatic Adoption of Future GAAP Changes

71. In our NPRM we proposed to allow carriers to implement changes to GAAP automatically after 90 days (60 day veto period, 30 day pre-implementation period) provided that: (1) Carriers notified the Commission of their intention to implement the change along with an analysis of its ratemaking impact and (2) the FCC did not stay implementation of the change pending further proceedings. Several parties want that proposal modified to include a provision for state review of GAAP changes. In addition, several parties oppose the prior review provision (NPRM at p. 6; 49 FR 21379, May 21, 1984).

72. We do not agree with those parties who want a provision for state review of GAAP changes added to the revised USOA. While the states have every right to review GAAP changes and to decide whether or not to implement them, we do not feel that their approval should be written into our accounting system. Futhermore, to alleviate the concerns of the states, we will add a provision in the revised USOA which will state that our accounting rules and approval of GAAP changes will not necessarily be binding on the ratemaking practices of the states.

73. While several parties oppose prior Commission review of future GAAP changes, we do not feel that this requirement is unduly burdensome. We are on record in this proceeding as supporting GAAP and its concept and we will continue this policy with respect to future changes in GAAP. Thus, we are essentially stating that we will adopt all future changes in GAAP unless the revenue requirement study that the carriers file with the Commission shows that the change will have a significant impact on revenue requirements. In our opinion, the vast majority of future changes in GAAP will be adopted under this modified automatic adoption plan without Commission interference.

74. To facilitate automatic adoption, we are modifying the proposal in the NPRM so that carriers can adopt changes to GAAP automatically after ninety days unless the Commission notifies the carrier to the contrary. This does not, however, alter the proposal in the NPRM that the carrier must notify us of its intention to adopt the change and that a revenue requirement study must also accompany the notification.

Materiality

75. In our NPRM we proposed to add provisions in the revised USOA requiring that a GAAP-related accounting decision that may have unanticipated ratemaking implications be referred to the Commission for its scrutiny. Several commenters objected to adding this provision on the basis that the GAAP definition of materiality was sufficient and that materiality cannot be more objectively defined than it is under GAAP. Several respondents also stated that the Commission's proposal would usurp management's authority and that it is contradictory to adopt GAAP and then drop one of its most important underpinnings.

76. As we stated in the NPRM, the GAAP definition of materiality leaves too much to the discretion of parties not bound by our public interest responsibilities to be viable in a regulatory accounting scheme. The comments received have not persuaded us to change our position that we need to retain sufficient control over the revised USOA to insure that it functions as a useful regulatory tool. Instead, we agree with GTE that Commission oversight in this area will facilitate the goal of consistent application of GAAP in the revised USOA.

77. We do not believe that scrutinizing accounting decisions with ratemaking implications in the fulfillment of our regulatory responsibilities usurps management's authority nor do we feel that it is contradictory to adopt GAAP and then not rely on the GAAP definition of materiality. The purpose of this proceeding is to implement GAAP to the extent practicable and for the reasons stated earlier we do not believe that the GAAP definition of materiality meets our regulatory needs.

78. We also do not agree with CPUC that the SEC definition of materiality should be adopted in the revised USOA. This statement was designed for internal control systems, and, while it is more discretionary than the GAAP definition of materiality, it may not meet our regulatory needs in every case. Therefore, we are not adopting it in the revised USOA.

79. Arthur Andersen stated that the Commission should not try to define materiality but, instead, should establish a materiality threshold. Arthur Andersen suggested materiality thresholds such as an item's relation to the total revenues of a company or a specific dollar limit amount. We do not agree with Arthur Andersen's suggestion that a materiality threshold should be established in the revised USOA. Thresholds do not lend themselves to the differing sizes of the companies that will be subject to Part 32.

80. We do, however, agree with Arthur Andersen's belief that the Commission should not try to define materiality. We have decided that the ratemaking considerations the Commission faces demand that the USOA require more specificity in the materiality area than what is provided under GAAP. While the USOA will not define materiality, this demand for greater specificity will be met by the fact that the system being designed is a detailed accounting system. Carriers in following the accounting system will not be able to deviate from the requirements without express approval under waiver provisions regardless of an item's materiality. Moreover, we will continue to examine such items as extraordinary items, unusual items and prior period adjustments on a case by case basis, irrespective of materiality to determine whether they should be classified as above or below the line items.

Jurisdictional Differences

81. We proposed to establish accounts to record the effects arising from differing accounting and ratemaking practices adopted by various regulatory authorities. While the majority of comments we received were in favor of establishing jurisdictional accounts, several parties were opposed to their inclusion in the revised USOA.

82. Several comments in opposition to the jurisdictional accounts contend that the proposed accounts are burdensome or of questionable value. Several other respondents observe that the implementation costs of jurisdictional accounts are minimal since carriers already maintain side records for jurisdictional ratemaking differences.

83. BellSouth proposes to record all transactions initially pursuant to GAAP, with any deviations from GAAP mandated by Federal or state regulatory authorities being recorded in jurisdictional accounts (3 Federal and 3 State). We see no need to adopt the BellSouth proposal which would add 3

jurisdictional accounts to record federally mandated deviations from GAAP. We are already aware of the USOA requirements that will diverge from GAAP, and we see no usefulness in monitoring our own actions. Accordingly, we will incorporate only 3 jurisdictional accounts in the USOA emanating from CC Docket 78-196.

84. With respect to the usefulness of the proposed accounts, we agree with MPSC and NYDPS that the jurisdictional accounts will provide useful information as to revenue requirement impacts of deviations adopted by various regulatory authorities. Moreover, we feel that the data will provide a barometer which shows the impact of varying state ratemaking practices and that the accounts will be helpful in monitoring separations practices.

85. Several parties support GTE's suggestion that we establish jurisdictional accounts on an interim basis until the USOA is adopted by all jurisdictions. Although we hope that all jurisdictions will adopt the same accounting standards, we recognize that the probability of this occurring is very slim. If this were to occur, however, we would eliminate the jurisdictional accounts from the USOA as they would no longer be necessary.

Nonregulated Activities

86. In our NPRM we stated our belief that accounting for nonregulated activities is solely within the purview of carrier management as long as those decisions do not affect future regulatory decisions. We did, however, request parties which considered rules in this area to be necessary to specify the rules desired and the criteria needed to implement them.

87. MPSC and OCA-PA stated that the USOA should be applied to all carrier activities because the operation of regulated and nonregulated functions can be intertwined and thus lead to cross-subsidization.

88. We have not been persuaded to change our view that accounting for nonregulated activities is within the purview of carrier management. As long as the carriers account for nonregulated activities in accordance with the policy set forth in the *Fifth Report and Order* in CC Docket 81-893, FCC 84-547 (released November 20, 1984), and in the computer II Inquiry,[11] we feel that the transactions of the nonregulated activities to be recorded in a separate set of books can be left to management prerogative. We agree with Ameritech that MPSC's and OCA-PA's concerns about cross-subsidization are unfounded since our authority over accounting for the regulated side of the carriers should be sufficient to prevent unpermitted cross-subsidization.

89. With respect to FPSC's belief that accounting for nonregulated activities should be left to the various individual regulatory bodies, we do not agree. The FCC has already addressed accounting for nonregulated activities in the *Fifth Report and Order, supra.* We believe this accounting treatment is working and, thus, we are not going to change it without evidence to the contrary.

Interest During Construction

90. The NPRM proposed to keep the current practice of capitalizing imputed interest on equity funds, in addition to interest on debt, but requested comments on the possibility of capitalizing interest during construction on the debt component only in accordance with GAAP. Several parties, mainly carriers, filed comments supporting the GAAP approach to capitalizing interest during construction. The majority of these parties also suggested that the Commission should include all plants under construction in the rate base along with allowing interest to be capitalized in accordance with GAAP.

91. While the revenue requirements studies submitted by AT&T, BellSouth and UTS show the impact of capitalizing interest during construction on both debt and equity funds. While this practice does diverge from GAAP, we believe that it is a very minor divergence.

92. We will not allow carriers to include all plants under construction in the rate base, as some parties suggest (see paragraph 46, *supra*), since this would result in the ratepayer paying for construction projects prior to receiving any benefit from them through improved services.

Pension Costs

93. We do not agree with FPSC's and MPSC's view that carriers should receive Commission approval prior to booking unfunded pension expenses which are actuarily determined. As the comments and reply comments note, most carriers are already accruing unfunded pension costs in accordance with GAAP, and no party has provided any information to suggest that this practice will have an effect on revenue requirements. Therefore, we see no need to review the pension costs being booked by carriers in accordance with GAAP, and we will allow carriers to book unfunded pension expenses which are actuarily determined in the revised USOA.

Unusual Items

94. Several parties suggested that the Commission not require carriers to submit unusual items for prior review and approval. These parties believe that the GAAP guidelines are sufficient and that the prior review provision would be burdensome and would disrupt the normal accounting process.

95. While we agree that the GAAP guidelines are specific as to what constitutes prior period adjustments and extraordinary items, we still feel that these items should be submitted to the Commission for review and approval. As the NPRM notes, these transactions by definition are significant and out of the ordinary and thus should be examined. By receiving notification of these transactions we can carry out our regulatory oversight responsibilities to insure that allowable costs are recovered by the carriers and gains and other credits are given to the ratepayer. Finally, we do not believe that it is unduly burdensome minor would it disrupt the accounting process to provide us with the opportunity to review unusual items since carriers currently do this under Part 31.

Contingencies

96. We proposed to follow GAAP with respect to recognizing contingent liabilities (see paragraph 52, *supra*) in the revised USOA. Eight respondents favored recognizing contingent liabilities pursuant to GAAP. Three states, however, are opposed to this proposal. Their opposition is based on their belief that GAAP does not reflect the operating realities of ratemaking and recognizing contingent liabilities could lead to misunderstandings in rate cases.

97. We do not agree with the states that recognizing contingent liabilities would lead to misunderstandings in rate cases or would ignore the realities of ratemaking. We feel that GAAP is specific in this area and its guidelines essentially equate to the logical recognition of liabilities.

98. CPUC expressed the view that contingencies should only be disclosed in the footnotes to the financial statements. We believe, as Ameritech states, that failure to recognize contingencies per FASB 5 would most likely result in distortions in rate case results and, as the OTCs submit, that contingent liabilities are current costs of operation and, therefore, should be

[11] Second Computer Inquiry (Computer II), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 3 (1981), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

recognized as a liability in the financial statements.

99. Finally, we do not feel that FASB 71 is more appropriate than FASB 5 as MPSC suggests. We agree with the OTCs that FASB 5 would recognize as a contingent liability any contingent liabilities imposed by the regulator in ratemaking cases.

Normalization Accounting

100. The NPRM proposed to permit normalization accounting for all tax timing differences. In the NPRM special emphasis was placed on interest during construction, pensions and other tax charges capitalized for book purposes but expensed for tax payment purposes. Generally speaking, the normalization of taxes relates the effect of these differences to the periods the capitalized amounts remain on the books of account. The benefits of lower taxes during the year in which amounts are capitalized for book purposes and deducted on tax returns for tax payment purposes are spread over succeeding periods. Under our current rules, tax benefits related to these transactions are "flowed-through" to current ratepayers. The actual tax liability for these items are recorded as an expense and ratepayers of succeeding periods receive no benefit.

101. The normalization of taxes related to those items in the NPRM would result in a higher book tax expense in the year the difference arises and lower book tax expenses in succeeding periods (as the taxes relate to the same items). In the first year, the additional amount would produce a deferred income tax credit which would be reduced over the period the capitalized amounts remain on the books. Since deferred income tax balances are deducted from the rate base in calculating allowable rates of return, ratepayers also derive some benefit from the calculation of the allowable rate of return using the reduced rate base. The TIAG group's analysis placed the first year additional revenue requirement at $690 million, with subsequent years requirements reducing to zero over a twelve year period (NPRM at p.12; 49 FR 21381, May 21, 1984). Beyond that point, ratepayers would be paying less because the rate impact of the accumulated deferred income tax balances (which are deducted from the rate base) will exceed additional tax effects of taxes normalized during the twelfth and succeeding years.

102. Several states are opposed to allowing normalization accounting because of its effects on revenue requirements. Several other respondents, while favoring normalization, suggest that it be applied only to prospective amounts, with the embedded amounts remaining under the "flow-through" method.

103. We have examined data submitted with the comments and reply comments and concluded that the additional revenue requirements of full normalization are too high. We have not ignored, however, the fact that normalization is already in place for depreciation and that waivers have been granted on a case by case basis, for other types of timing differences. We are also aware of the inconsistency in practicing normalization for some timing differences but not others and the fact that we are here addressing the last significant portion of the normalization issue. Nor are we unaware of the long-term benefits of normalization and the advantages from an accounting standpoint of making reported industry financial statements more consistent with the unregulated American business community. While we have decided that full implementation costs are too high, we have not decided to reject ultimate full normalization. We have explored alternative methods for phasing-in normalization in those areas proposed in the NPRM.

104. After reviewing the record, we have decided to phase-in tax normalization for the tax effects of different book and tax treatment of capitalized interest during construction, pensions, and tax charges and all other material timing differences.[12] Under the methodology we have chosen, the carriers would normalize 20 percent of the amount that would ordinarily have been flowed-through in the initial year. An equal amount would be recorded as a deferred tax credit.[13] In the initial year, the 20 percent normalization would create an additional revenue requirement. In subsequent years, the deferred tax credit would be reduced and book tax expense would be lower than under the flow-through method. In succeeding years, carriers could normalize an additional 20 percent each year (40 percent in year 2, 60 percent in year 3, and so on) until at the end of the fifth year full normalization would occur.

105. We believe the foregoing methodology would smooth somewhat the additional revenue requirements of normalization[14] and meets the tests of being rational, systematic and equitable. We recognize that the use of a phase-in methodology is not an ideal resolution, but it does balance our concern for ratepayers against our desire to move the accounting policies we prescribe for telephone companies closer to the conventional practices of the rest of the American business community.

106. Finally, in dealing with balance sheet presentational aspects, we have tentatively decided to follow the deferral method in applying normalization as prescribed under GAAP rather than the net of tax method which was proposed in the NPRM. The deferral method would show deferred taxes as a deferred credit and the net of tax method would show deferred taxes as a deduction from the related asset. The ultimate decision, however, as to which method we will allow for normalization, will be made in the context of the USOA proceedings in CC Docket 78–196.

Capitalized Leases

107. In the NPRM we proposed the adoption of GAAP with respect to the capitalization of certain leases which generally speaking, convey ownership type benefits and risks to the lessee. Several states were opposed to the capitalization of leases (paragraph 58, *supra*) suggesting different treatment for ratemaking purposes, i.e.; continued treatment as noncapitalized operating leases and recognition of rental expense only. The revenue impact data provided in the comments have led us to the conclusion that there will be no significant revenue requirement increases as a result of capitalizing certain leases per FASB 13 "Accounting for Leases". Moreover, we are of the opinion that FASB 13 presents leases in the proper light, whereby the carriers recognize the liability they have incurred through the establishment of a long-term lease, as well as the fact that the leased asset becomes an asset in the provision of telecommunications services. We will therefore, incorporate the FASB 13 treatment of capital leases as they pertain to lessees in the new USOA proposed in CC Docket 78–196. There will of course be some consideration for regulatory consistency in two areas.

[12] The methodology discussed in paragraph 104 would not affect depreciation or other items the tax consequences of which have already been normalized pursuant to rule or waiver.

[13] We recognize that some timing differences will result in deferred charges but for ease of illustration we have outlined the methodology as it relates to deferred credits, which we expect to be prevalent.

[14] We also recognize that the amounts to be normalized would be affected by decisions yet to be made in CC Docket 78-196 with respect to the capitalization vs. expensing of certain plant costs. These matters will be addressed in the Final Report and Order in that docket.

108. In the first area, where the OTCs pointed out that the original cost consideration in the TIAG report was not one of the valuation considerations for capital leases in FASB 13, we have decided to retain the original cost consideration in order to preclude double recovery for the same asset. This could occur, when items are transferred between telephone companies and recorded at fair value which exceeds original cost. We expect, however, that in most instances, fair value will equate with original cost.

109. In the area of lessor accounting, the OTCs point out that the NPRM was silent and that the new USOA should provide corollary treatment for lessor accounting. We do not believe this is a problem area because our rules (current and now under development) that require distinctions between regulated and nonregulated activities will be the prevailing consideration in lessor accounting, and to the extent that carriers are engaged in leasing activities, much of their activity will be accounted for as nonregulated—which essentially means that lessors would be able to follow GAAP. This is a matter, however, that will be addressed in the final rule emanating from CC Docket 78–196.

Compensated Absences

110. In the NPRM we proposed to require the accrual of compensated absences in the year in which they are earned and to implement deferred amounts over a representative number of years. Two respondents, however, were opposed to the proposal in the NPRM.

111. We do not agree with NYDPS' position that the GAAP standard is too conservative for regulated firms which can be expected to continue to exist in the future and, therefore, do not need to accrue compensated absences. We are of the opinion that accruing compensated absences in the year in which they are earned is the proper method of accounting in that it recognizes that a liability has been incurred by the carrier to provide compensation to its employees at some future date.

112. After reviewing the revenue requirement impact study submitted by AT&T, we agree with NYDPS and KPSC that the change to the accrual method would have a substantial revenue requirement impact, mainly because of the catch-up entry that must be made to recognize the liability for compensated absences which exists but is not yet recorded on the carriers' books. TIAG estimated the additional revenue requirement for the catch-up year to be $1.7 billion (NPRM at p. 14; 49 FR 21382, May 21, 1984). We do not favor NYDPS' suggestion that the catch-up entry be deferred indefinitely. Instead, we agree with the positions of AT&T, BellSouth and the OTCs that the catch-up entry should be amortized ratably over a specified number of years to minimize the impact on revenue requirements. We believe that the phase-in period proposed by the above carriers of from 3–5 years increases the revenue requirements by far too much. We are adopting a phase-in period of 10 years to amortize the catch-up entry so that the revenue requirement impact is further lessened. We would have carriers book the liability, establish a deferred charge and amortize the deferred charge over 10 years. Current year accruals will be booked to the liability account and charged to the appropriate expense account as employees earn vacations or sick days. This procedure should reduce the impact of the catch-up to 10 percent of the TIAG estimate.[15]

Implementation

113. AT&T and Arthur Andersen believe that GAAP should be incorporated into the USOA as soon as possible rather than when the other revisions of the USOA become effective. They feel that Part 31 will require only modest changes to accommodate GAAP and that delaying implementation only serves to delay recovery of costs for ratemaking purposes.

114. We do not agree that GAAP should be adopted into the USOA prior to the effective date of the USOA rewrite being developed in CC Docket 78–196. We feel that it would be confusing to adopt new requirements and accounts in Part 31 and then have the possibility of completely different accounts being established in the revised USOA.

VI. Other Matters

115. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of the proposed amendments. We certify that the Regulatory Flexibility Act is not applicable to the rules in this proceeding. Although some local exchange carriers are very small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." The Act incorporates the definition of a "small business" in section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceeding, 85 FCC 1, 23–24 (1980). To the extent that interexchange carriers are affected by these rules, we hereby certify that these rules will not have significant economic effect on a substantial number of small entities.

116. The collection of information requirements contained in this rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. 35. All questions concerning the collection requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Communications Commission. *See* 5 CFR 1320.13(a).

VII. Ordering Clauses

117. Although we do not intend to revisit these subjects when we issue an opinion adopting a new USOA, we will defer the adoption of the rules that will implement the decisions described in this *Report and Order* until we adopt the rules that are being developed in CC Docket 78–196. The rules that implement this decision will become effective at the time the revised USOA becomes effective.

118. It is ordered that CC Docket No. 84–469 is hereby terminated.

119. It is further ordered that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

120. It is further ordered that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–27631 Filed 11–22–85; 8:45 am]

BILLING CODE 6712-01-M

[15] A decision as to whether or not to include the unamortized deferred charge balance in the rate base as the OTCs suggest is a rate matter which would be more appropriately handled in a rate proceeding rather than in this rule which is intended to resolve accounting issues.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 175

[Docket No. HM-166-S, Amdt. Nos. 171-84, 172-102, 173-195, and 175-34]

Magnetized Material

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule deregulates certain materials classed as magnetized material under the Hazardous Materials Regulations (HMR). RSPA believes that the present rules applying to magnetized materials carried aboard aircraft are obsolete. The intended effect of this rule is to eliminate the marking, labeling, and shipping paper requirements in the HMR with regard to magnetized material, while continuing to forbid the transportation of materials as packaged with a gauss level of more than 0.00525 gauss at a distance of 15 feet.

EFFECTIVE DATE: This amendment is effective February 25, 1986. However, compliance with the regulations, as amended herein, is authorized as of November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On September 24, 1984, RSPA published a notice of proposed rulemaking in the **Federal Register**, (Notice 84-10), (49 37438). That notice proposed to amend the regulations governing the transportation of magnetized materials aboard aircraft. The notice was published in response to a petition for rulemaking submitted by the Motor Vehicle Manufacturers Association (MVMA). RSPA proposed to deregulate certain materials, such as automobile fenders and other automobile parts, which may meet the lower magnetic criteria in 49 CFR 173.1020 for magnetized material (0.002 gauss or greater at a distance of 7 feet from any point on the surface of the package). The notice also proposed to eliminate the *Magnetized Material* labeling requirement, and the ORM-C marking for packagings which have a gauss level of 0.00525 gauss or less at a distance of 15 feet, and to forbid transportation of materials by aircraft, which as packaged, have a gauss level of over .00525 gauss at a distance of 15 feet.

As stated in the notice, RSPA believes that the current rules on magnetized materials are obsolete and fail to recognize improvements in the technology of aircraft intrumentation over the past 30 years that substantially prevent most magnetized materials from having an adverse effect on the operation of instruments.

In response to Notice 84-10, RSPA received 21 written comments. The respondents included shippers of magnetized materials, the Airline Pilots Association (ALPA), the Air Transport Association of America (ATA), and the U.S. Air Force (USAF). Of those commenters expressing an opinion on the overall merits of the proposal, all commenters were in favor of the proposal except the ALPA, the ATA and the USAF.

The ALPA expressed concern that while individual shipments may not contain sufficient magnetic force to affect aircraft instrumentation, multiple shipments aboard an aircarft may affect instrumentation. Operating information which is required to be furnished to pilots of aircraft (operating under rules contained in 14 CFR Parts 121 and 135) include cockpit checklists. Cockpit checklists include making certain that instruments are working properly. If multiple quantities of individual shipments, each containing non-regulated amounts of magnetized material are stowed aboard an aircraft so as to affect the instrumentation, the problem would become apparent as the pilot performs the pre-flight check. If as a result the instruments are diverted, corrective action must be taken before takeoff. RSPA believes that such occurrences are highly unlikely because of the remote positioning of magnetic flux detectors in modern aircraft. No test results or technical justification were submitted in support of ALPA's position.

The ATA commented that a number of its members were in favor of the proposed rule and one member was against the proposal, stating that in recent years DC-8 aircraft were twice affected by materials with magnetic properties. No information or documentation was supplied regarding the details of these incidents, and there was no indication as to whether the materials were properly or improperly transported under the provisions of the HMR.

The USAF commented in opposition to the proposed rule without providing technical details.

RSPA and the Federal Aviation Administration (FAA) believe that these rules will not reduce the level of air safety and will relieve a burden of undue regulation on shippers and carriers. To assure the proper stowage of cargo aboard aircraft which might not have compasses with remote sensors or aircraft having compass master units located within the fuselage, the FAA is publishing an Advisory Circular to provide information relevant to the preparation and loading of magnetic materials for shipment in civil aircraft.

RSPA is delaying the effective date of this rule for 90 days to allow petitions for reconsideration to be submitted by interested parties. Commenters who can provide test results or technical justification may petition RSPA for reconsideration following the procedures in § 106.35.

It should be noted that this rule amends the rules for air transportation of hazardous materials under the provisions of 49 CFR and does not affect the rules under the *Technical Instructions for the Safe Transport of Dangerous Goods by Air*, published by the International Civil Aviation Organization (ICAO). However, RSPA will recommend that the ICAO Technical Instructions be amended accordingly.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is considered unnecessary because the anticipated impact is minimal.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation,

Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

§ 171.8 [Amended]

2. In § 171.8, the entry for "Magnetic Materials" is revised to read as follows:

* * * * *

"Magnetic materials" See § 173.21(f).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

4. In § 172.101, the Hazardous Materials Table is amended by deleting the current entry for Magnetized material and adding a new entry to read as follows:

§ 172.101 Hazardous Materials Table.

	† EAW Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	(5a)	(5b)	(6a)	(6b)	(7a)	(7b)	(7c)
	(Remove)										
	Magnetized material	ORM-C	UN2907	Magnetized material	None	173.1020	No limit	No limit			
	(ADD)										
A	*Magnetized material. See* 173.21(f).										

§ 172.402 [Amended]

5. In § 172.402, paragraph (d) is removed and reserved.

§ 172.446 [Removed and Reserved]

6. Section 172.446 is removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

8. In § 173.21, a new paragraph (f) is added to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) For carriage by aircraft, any material which when packaged has a measurable magnetic field of more than 0.00525 gauss when measured from any surface of the package at a distance of 15 feet.

§ 173.1020 [Removed and Reserved]

9. Section 173.1020 is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

10. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53, unless otherwise noted.

§ 175.30 [Amended]

11. In § 175.30, paragraph (d)(3) is removed and reserved.

§ 175.85 [Amended]

12. In § 175.85, paragraph (g) is amended by removing the last sentence.

Issued in Washington, D.C. on Nov. 18, 1985, under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 85-28048 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 50, No. 227
Monday, November 25, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is publishing proposed regulations to eliminate the requirement for a debt claim form "specified by OPM" when a creditor agency wishes to request recovery of a debt from an employee of another agency. This action is necessary to allow agencies greater flexibility in working out debt collection arrangements and to facilitate the collection of debts already certified by creditor agencies and awaiting further action.

DATE: Comments must be received on or before December 26, 1985.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044 or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On July 3, 1984, OPM published final regulations at 49 FR 27470 that implemented the salary offset provisions of 5 U.S.C. 5514. The final regulations specified what agency salary offset regulations should contain. They also established guidelines for requesting salary offsets when the debtor's creditor agency and the paying agency are not the same.

Questions OPM has received since publication of the existing regulations have prompted us to propose an amendment to the debt collection procedures in 5 CFR 550.1106, when the creditor and the paying agency are different. This change would eliminate the requirement for a debt claim form "specified by OPM." The proposed regulations retain all the requirements regarding the information to be certifed and forwarded to the paying agency by the creditor agency.

Under these proposed regulations, the paying agency would inform the employee that a certification of the employee's debt has been received, but the notice to the employee need not include a copy of the creditor agency's certification. The change is necessary to facilitate the collection of debts already certified by the creditor agency and awaiting collection. The regulations would be further clarified by separating the responsibilities of the creditor and paying agency into separate paragraphs.

Proposed regulations have previously been published [50 FR 18267, April 30, 1985] to amend the definition of "agency" and eliminate the last three sentences in § 550.1106(b)(3) of the existing regulations.

I find that because of the need to expedite the collection of already certified debts under 5 U.S.C. 5514, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

E.O. 12291, Federal Regulation

I certify that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and would affect only the Federal Government.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for Part 550 is removed and the authority citation for Subpart K is revised to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

2. Section 550.1106 is revised to read as follows:

§ 550.1106 Time limit on collection of debts.

Under 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph.

3. Section 550.1108 is added to read as follows:

§ 550.1108 Requesting recovery when the current paying agency is not the creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the

information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(d)(1). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (See 31 U.S.C. 3716 and the FCCS.)

(b) *Responsibilities of paying agency.*—(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.* (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

[FR Doc. 85-28100 Filed 11-22-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 978

[Docket No. TVR-PA-1]

Vegetables Grown in Texas; Final Decision on Proposed Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes a marketing agreement which would authorize a coordinated research and promotion type program for vegetables grown in Texas. The proposed agreement would establish individual commodity committees and a Texas Vegetable Council which would handle the local administration of the research and promotion programs. Program costs would be financed by assessments collected from fresh market shippers who sign the agreement. To become effective the proposal would require that the marketing agreement be signed by handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district.

DATE: Handler sign-up of this agreement may begin after November 25, 1985. The effective date for the marketing agreement as to any individual vegetable will not begin until after handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district have signed the marketing agreement and the Agricultural Marketing Service has published in the **Federal Register** a final rule.

FOR FURTHER INFORMATION CONTACT: David B. Fitz, Marketing Field Office, F&V Division, AMS, USDA, 320 North Main Street, Room A-205D, McAllen, Texas 78501, phone (512) 682-2833, who will provide information and agreement sign-up documents, or James B. Wendland, Vegetable Branch, F&V Divison, AMS, USDA, Room 2545 South Building, Washington, DC 20250, phone (202) 447-5432.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291. Prior documents in this proceeding: Prenotice press release—Issued regionally on January 4, 1985; Notice of Hearing—Issued February 7, 1985, and published in the **Federal Register** (50 FR 5593) on February 11, 1985; Notice of Recommended Decision—Issued August 16, 1985, and published August 21, 1985 (50 FR 33748).

Small Businesses

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons were invited at the public hearing to present evidence on the probable regulatory and informational impact of the proposed rule on small businesses.

As discussed at length in the recommended decision, the marketing agreement applies to persons operating predominently small businesses and would only be binding on handlers who voluntarily sign it. Thus, it is tailored to the size and nature of these small businesses and in keeping with the Regulatory Flexibility Act.

It is hereby determined and certified that this action will not have a significant economic impact on a substantial number of small entities.

Preliminary Statement

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601 *et seq.*), and rules of practice and procedure to formulate such

programs (7 CFR Part 900), this proposed marketing agreement was formulated on the basis of the record of a public hearing held at San Antonio, Texas, February 20–21, 1985. Notice of the hearing was published in February 11, 1985, issue to the **Federal Register** (50 FR 5593). The notice set forth a proposed marketing agreement submitted by the Texas Vegetable Research and Promotion Steering Committee, listing handlers "representing over 75 percent of Texas acreage of vagetables for fresh market."

As discussed in the recommended decision, the proposed agreement would establish commodity committees consisting of two to eight members and a Texas Vegetable Council consisting of the chairman of each commodity committee, who would handle the local administration of the research and promotion programs. Program costs would be financed by assessments collected only from shippers of vegetables grown for fresh market who voluntarily sign the agreement. There are no provisions for any inspection, grade, size, container or volume regulations. To become effective the proposal would require that the marketing agreement be signed by handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district.

On the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on August 16, 1985, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision which contained notice of the opportunity to file by September 10, 1985, written exceptions thereto. Exceptions or comments were filed by eight persons. Seven of the comments received were generally in support of the proposed marketing agreement and most recommended that it be approved as soon as possible. Of the seven supporting comments, one comment was submitted by a representative of the proponents, five by Texas grower/shippers of fresh vegetables, and one on behalf of three South Texas vegetable administrative committees. The reasons given for their support included the need for further research into planting and harvesting techniques unique to Texas, the need to build a market image of Texas as a major produce supplier in the United States, and the need to improve market demand for Texas vegetables.

One commentor wanted to be sure that benefits of advertising and the economies of scale to be afforded by this multi-commodity State-wide, year-round program were recognized. Such points were presented at the hearing and were discussed at length in the recommended decision.

Another supporting comment recommended that the definition of "grower' include any handler who has invested money in a vegetable crop and shares in the profit or loss. The proposed definition of "grower" states that the word is, ". . . synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for market." The use of the term "in a proprietary capacity" is intended to cover the situation which the commentor raised, provided of course that there is actual handler ownership of a share of the vegetables rather than, for example, simply a transfer of cash. Accordingly, the definition of grower does not need to be revised for further clarification.

One commentor indicated that he opposed any marketing agreement on the basis that there was too much government in general. The commentor preferred to leave research and promotion to State agricultural colleges and the private agricultural related businesses. In the recommended decision, it was noted that it had been difficult in the past to bring about a coordinated program of research and promotion because the industry is comprised of mainly small-sized businesses spread geographically across the State of Texas. Further, several previous attempts to establish voluntary research and promotion programs were not fully successful. A marketing agreement such as proposed is authorized by the Agricultural Marketing Agreement Act of 1937. The marketing agreement proposed in this final decision is binding only on signatories to the agreement. It is designed for small businesses and would establish a program with the least possible governmental regulatory involvement or burden on the industry. Accordingly, this comment has been rejected as being inconsistent with the policy of the Act and purposes of the agreement.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision published August 21, 1985 (50 FR 33748) are hereby incorporated by reference herein and made a part hereof, subject to the following corrections of inadvertent, grammatical, or obvious errors. In the supplementary information section of the recommended decision, on page 33751, third column beginning of first full paragraph "duty" should read "duly" and on page 33752, middle column in second full paragraph "Texas vegetable" should be plural. On page 33754, first column, 23rd line "rules regulations" should be "rules and regulations."

The text of the proposed marketing agreement remains unchanged except for the following changes. The authority citation is restated. The last citation in § 978.2, Act, is revised to read, "7 U.S.C. 601 *et seq.*" rather than "78 . . . ."

Rulings on Exceptions

In arriving at the findings and conclusions, and the provisions of this decision, each of the exceptions to the recommended decision was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Handler Sign-Up

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) it is hereby directed that a handler sign-up be conducted among area handlers to detemine whether a sufficient number of handlers sign the agreement for it to become effective for any particular vegetable in any particular district. David B. Fitz, Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, 320 North Main St., McAllen, Texas 785091, telephone (512) 682–2833, is hereby designated agent of the Secretary of Agriculture to conduct the handler sign-up.

Marketing Agreement

Annexed hereto and made a part hereof is the document entitled "Texas Vegetable Research and Promotion Agreement," which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that the entire decision be published in the **Federal Register.**

Copies of this Decision are being mailed to known interested persons. Others may obtain copies from James B. Wendland or David B. Fitz (see addresses above).

Signed at Washington, D.C., on November 18, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

List of Subjects in 7 CFR Part 978

Marketing agreements and orders, Vegetables, Texas.

The marketing agreement proposed on behalf of Texas vegetable growers and handlers is as follows:

PART 978—TEXAS VEGETABLE RESEARCH AND PROMOTION AGREEMENT—NO. 978

Subpart—Marketing Agreement

Definitions

Sec.

Administrative Bodies

Commodity Committees

Council

Administration

Research and Promotion

Expenses and Assessments

Reports, Books and Records

Miscellaneous

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.

Subpart—Marketing Agreement

Definitions

§ 978.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 978.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 978.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 978.4 Area.

"Area" means the State of Texas.

§ 978.5 Vegetables.

"Vegetables" means the edible product of all varieties of plants known as *Angiospermae* or others designated by the Secretary grown in the area and includes but is not limited to the following: Broccoli, cabbage, carrots, celery, cantaloupes, honeydew melons, cucumbers, onions, peppers, potatoes, and mixed greens.

§ 978.6 Grower.

"Grower" is synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for market.

§ 978.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, transport, or in any other way to place fresh vegetables, produced in the area, or cause such vegetables to be placed, in the current of commerce within the area or between the area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the area of field-run vegetables to a person for the purpose of having such vegetables prepared for market.

§ 978.8 Handler.

"Handler" is synonymous with "shipper" and means any signatory person (except a common or contract carrier of vegetables owned by another person) who handles vegetables or causes vegetables to be handled.

§ 978.9 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of vegetables.

§ 978.10 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

§ 978.11 Consumer education.

"Consumer education" means any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation and utilization of vegetables.

§ 978.12 Programs and projects.

"Programs" and "projects" mean those production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects pursuant to § 978.40.

§ 978.13 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the calendar year or such other period recommended by the Council and approved by the Secretary.

§ 978.14 Part and subpart.

"Part" means the Texas Vegetable Research and Promotion Agreement and all rules, regulations, and supplemental orders issued pursuant to the Act and the agreement. The aforesaid agreement shall be a "subpart" of such "part."

§ 978.15 Commodity Committee.

"Commodity Committee" means a committee established pursuant to § 978.20.

§ 978.16 Council.

"Council" means the Texas Vegetable Council pursuant to § 978.24.

§ 978.17 District.

"District" means any of the geographic divisions of the area initially established pursuant to § 978.28 or as reestablished pursuant to § 978.29

Administrative Bodies

Commodity Committees

§ 978.20 Establishment and membership.

(a) A Commodity Committee is hereby established for each commodity subject to this agreement. Whenever a commodity is added to this subpart, a Commodity Committee shall be formed for such.

(b) Each Commodity Committee shall consist of not less than two or more than eight members, each of whom shall have an alternate. The members and alternates shall be selected in accordance with the provision of § 978.21. To the extent practical, the membership of each Commodity Committee shall be apportioned among signatory districts in accordance with the number of signatory handlers and respective volume in each district: Except that whenever two or more districts are represented on a Commodity Committee, no single district's representation shall constitute a majority of that committee.

§ 978.21 Eligibility.

Each Commodity Committee member and alternate member shall be at the time of selection and throughout the term of office a signatory handler or an officer or an employee of a signatory handler of the particular commodity, and a grower of such commodity in the district for which selected.

§ 978.22 Term of office.

(a) The term of office of the Commodity Committee members and their respective alternates shall be for three years beginning January 1 and ending December 31, or such other three-year period as the Committees and the Council may recommend and the Secretary approve. The term shall be so determined that approximately one-third of each committee shall terminate each year. Members and alternates shall serve in such capacity for the portion of the term for which they are selected and have qualified. However, no member shall serve more than two full consecutive terms without approval from the Secretary.

(b) The term of office of the initial members and alternates shall begin on the date determined by the Secretary. The initial members and alternates shall be selected for terms of one, two, or three years so that approximately one-third of each Commodity Committee may be replaced each year.

§ 978.23 Powers and duties.

Each Commodity Committee shall have, among others, the following powers and duties with regard to the respective vegetable for which it was established:

(a) To meet and organize and to select from among its members a chairman, vice chairman, and such other officers as may be necessary, to select subcommittees from its membership, and such consultants as it deems advisable. To adopt such by-laws for the conduct of its business as it may deem advisable, and it may establish consultant committees of persons other than Commodity Committee members and alternates;

(b) To act as intermediary between the Secretary and any grower or shipper;

(c) To investigate, from time to time, and assemble data on the growing, shipping, and marking conditions;

(d) To establish production research, marketing research, and marketing development projects authorized under § 978.40;

(e) To consult, cooperate, and exchange information with marketing agreement and order committees and other individuals or agencies in connection with all proper activities and objectives under this part;

(f) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Commodity Committee.

(g) To make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the vegetable for which the committee was established as are necessary or incidental to the administration of the agreement as are consistent with its provisions, and as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(h) To submit to the Secretary, for approval, as soon as practicable after the beginning of each fiscal period, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Council, the probable cost of each research, information, advertising, promotion, and development program or project, and an explanation of the items therein and a recommendation as to the rate of assessment for the respective vegetable for which the Commodity Committee was established;

(i) With the approval of the Secretary, to redefine the districts pursuant to § 978.29 or change the representation of any signatory district affecting the Commodity Committee;

(j) To develop programs and projects and, with the approval of the Secretary, to enter into contracts or agreements with appropriate contracting parties, including, but not limited to, industry groups profit or nonprofit companies, private or State colleges and universities, and governmental groups for the development and carrying out of the projects and programs of the Commodity Committee, and for the payment of the costs thereof with funds collected pursuant to this part, except that nothing in this subpart shall preclude a Commodity Committee from directly, without the use of contracts, conducting projects or activities pursuant to § 978.40. Any such contract or agreement shall provide: (1) That such contracting parties shall develop and submit to the Commodity Committee a plan or project; together with a budget, which shows the estimated cost to be incurred for such plan or project: (2) any such plan or project shall not become effective until after approval by the Secretary; (3) any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement; (4) to make periodic reports to the Commodity Committee of activities carried out; (5) to account for funds received and expended; and (6) such other reports as the Commodity Committee and/or the Secretary may require;

(k) To appoint and convene from time to time special panels drawn from, but not limited to, any one or more of the following: production, wholesale, retail, or consuming sectors of the vegetable industry or advertising, promotion, education, or consumer education persons, to assist in the development of research, information, education, advertising and promotion programs or projects and to disburse the necessary funds for such panel or panels; and

(l) To accumulate a reasonable monetary reserve not to exceed approximately three fiscal period's budgets to maintain the continuity of programs and fulfill other obligations and expenses.

Council

§ 978.24 Establishment and membership.

(a) A Texas Vegetable Council is hereby established consisting of the Chairmen of each Commodity Committee. Their alternates shall be the Vice Chairmen of each such Committee.

§ 978.25 Term of office.

(a) The term of office of the Texas Vegetable Council and their respective alternates shall be for one year beginning January 1 and ending December 31, or such other one-year period as the Council may recommend and the Secretary approve.

(b) The term of office of the initial members and alternates shall begin on the date they are appointed by the Secretary and end when their successors are selected and have qualified.

(c) Council members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and their successors are selected and have qualified.

§ 978.26 Powers.

The Council shall have the following powers:

(a) To supervise and coordinate the administration of this part in accordance with its terms and conditions;

(b) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(c) To recommend to the Secretary amendments to this part.

§ 978.27 Duties.

The Council shall have, among others, the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, and also to select committees and subcommittees from its membership, and consultants, to adopt such by-laws for the conduct of its business as it may deem advisable. It may make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the agreement as are necessary or incidental to its administration and as may be necessary to accomplish the purposes of the Act. The Council may also establish consultant committees of persons other than Council members and alternates and reimburse their necessary and reasonable expenses;

(b) To appoint from its members an Executive Committee consisting of not less than four nor more than eight members, which shall, to the maximum extent practicable, reflect the membership composition of the Council, and whose commodity group representation shall be proportional to that of the Council. Also to delegate to said committee authority to administer the terms and conditions of their agreement under the direction of the Council and within the policies determined by the Council, and to appoint or employ such persons as it may deem necessary and to determine the composition, define the duties and fix the bonds of such employees. Whenever three or less Commodity Committees are effective pursuant to § 978.70 or paragraph (b) of § 978.76, the Commodity Committee(s) may assume the responsibilities of the Council and appoint members from its membership to a temporary Executive Committee to serve in such capacity until more Commodity Committees become effective. When this occurs the Council will be established in accordance § 978.24 and the Executive Committee will be appointed by such Council, replacing the temporary Executive Committee;

(c) To keep minutes, books, and records which clearly reflect all the acts and transactions of the Council, Commodity Committees, Executive Committee, and subcommittees. Such minutes, books, and records shall be subject at any time to examination by the Secretary or by such persons as may be designated by the Secretary. Minutes of each such meeting shall be promptly transmitted to the Secretary;

(d) To develop and provide the Commodity Committees data on shared expenses to facilities equitable apportionment of such expenses in the development of budgets;

(e) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Council;

(f) To cause the books of the Council and Commodity Committees to be audited by a competent public accountant at least once each fiscal period and at such other time or times as the Council may deem necessary or as the Secretary may request. Such audit shall be submitted to the Secretary and shall indicate whether the funds have been received and expended in accordance with the provisions of this part;

(g) To give the Secretary the same notice of meetings of the Council, Commodity Committees, Executive Committee, and subcommittees as is given to their members in order that representatives of the Secretary may attend such meetings;

(h) To submit to the Secretary such available information pertaining to this subpart as may be requested;

(i) To prepare periodic statements of the financial operations of the Council and Commodity Committees and to make copies of such statements available to signatory handlers for examination at the Council office;

(j) To prepare and forward to the Secretary, as soon as is practicable after the close of each fiscal period, an annual report and make copies available to each signatory handler. This report shall contain at least a review and summary of all activities, programs, and projects conducted during the fiscal period; and

(k) To maintain books and records of the Council, Commodity Committees, Executive Committee, and subcommittees, and prepare and submit reports from time to time to the Secretary as may be prescribed and to make appropriate accounting with respect to the receipt and disbursements of funds entrusted thereto.

Administration

§ 978.27 Districts.

The area is hereby initially divided into the following districts:

District 1: (Rio Grande Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy.

District 2: (South Texas) The Counties of Maverick, Kinney, Val Verde, Edwards, Real, Kerr, Bandera, Gillespie, Kendall, Blanco, Travis, Hays, Bastrop, Caldwell, Fayette, Gonzales, Colorado, Lavaca, Wharton, Jackson, Matagorda, Uvalde, Medina, Bexar, Comal, Guadalupe, Wilson Karnes, Goliad, Refugio, Aransas, De Witt, Victoria, Calhoun, Zavala, Frio, Atascosa, Live Oak, Bee, San Patricio, Dimmit, La Salle, McMullen, Jim Wells, Nueces, Webb, Duval, Kleberg, Zapata, Jim Hogg, Brooks, and Kenedy.

District 3: (Plains) The Counties of Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Floyd, Gaines, Hale, Hartley, Hockley, Howard, Lamb, Lubbock, Lynn, Martin, Parmer, Potter, Swisher, Terry, Yoakum, Dallam, Sherman, Hansford, Andrews, Ochiltree, Mitchell, Cottle, Lipscomb, Nolan, Hardeman, Moore, Taylor, Foard, Hutchinson, Callahan, Wilbarger, Roberts, Dickens, Hemphill, King, Oldham, Knox, Carson, Baylor, Gray, Garza, Wheeler, Kent, Randall, Stonewall, Armstrong, Haskell, Donley, Throckmorton, Collingsworth, Borden, Hall, Scurry, Childress, Fisher, Motley, Jones, and Shackelford.

District 4: (Trans-Pecos) The Counties of Brewster, Crane, Culberson, Jeff Davis, Ector, El Paso, Hudspeth, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

District 5: (Remainder of State) All of the counties not in Districts 1 through 4.

§ 978.29 Redistricting and reapportionment.

(a) The various Commodity Committees may recommend and the Secretary may approve, the reestablishment of districts for each commodity within the area and the reapportionment of members among districts. In recommending any such changes, the Committee shall give consideration to: (1) Shifts in vegetable acreage; (2) the importance of new production; (3) the equitable relationship of membership and districts; (4) economies to result in promoting efficient administration; and (5) other relevant factors.

(b) No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for such redistricting or reapportionment may be made less then six months prior to such date.

§ 978.30 Nominations.

(a) *Initial members.* Nominations for initial members of each Commodity Committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the Committee responsible for promulgation of this subpart. Such nominations may be made by means of a meeting or meetings of the handlers of the particular commodity in each district. Such nominations, if made, shall be filed with the Secretary no later than 60 days after the effective date of this agreement. In the event nominations for initial members and alternate members of the Commodity Committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 978.20.

(b) *Successor members.* (1) The Council shall hold or cause to be held and shall reasonably publicize a meeting or meetings of handlers for each applicable Commodity Committee in each district for the purpose of designating at least one nominee for each position on said Committee which either is or is about to become vacant. These meetings shall be supervised by the Council in accordance with procedure prescribed for each commodity.

(2) The names of nominees shall be supplied to the Secretary in such manner as may be prescribed not later than November 1 of each year, or by such other date as may be specified by the Secretary.

(3) Only signatory handlers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the election of nominees. Each such handler, including employees, shall be entitled to cast but one vote in each balloting in which eligible to participate.

(4) Each handler, including employees of such handler, is entitled to cast one vote on behalf of itself, its agents, subsidiaries, affiliates, and representatives for each position in each district for each commodity the shipper handles in such district.

(5) Each Commodity Committee shall prescribe such additional clarifications, qualifications, administrative rules and procedures for nominations as it deems necessary and the Secretary approves.

§ 978.31 Selection.

The Secretary shall appoint the members and alternate members of each Commodity committee from nominations made in accordance with § 978.30.

§ 978.32 Failure to nominate.

If nominations are not made within the time and manner prescribed in §§ 978.30 and 978.31, the Secretary may, without regard to nominations, select members and alternate members of the Council.

§ 978.33 Alternate members.

(a) There shall be an alternate member for each member of each Commodity Committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner, and shall hold office for the same term as the member for whom he/she is an alternate.

(b) An alternate member of a Commodity Committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or committee, in that order, may designate another alternate from the same commodity group to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified.

(c) The Commodity Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 987.34 Vacancies.

To fill Commodity Committee vacancies, the Secretary may select members or alternates from nominees on the latest nomination reports or from nominations made in the manner specified in § 987.30, unless filling such vacancy is deemed unnecessary by the Secretary.

§ 987.35 Procedure.

(a) A majority of all the members of the Council shall constitute a quorum, and any action of the Council shall require the concurrence of the majority of all members present at a meeting.

(b) A quorum of each Commodity Committee shall consist of the majority of the members and all actions shall require the concurrence of the majority of all members present at a meeting.

(c) The Council and each Commodity Committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) At assembled meetings, all votes shall be cast in person. However, the Council and Commodity Committees may vote by mail, telephone, telegraph, or other means of communication: Except that each proposition is explained accurately, fully, and identically to each member. All such voters shall be promptly confirmed in writing and recorded in the minutes of each meeting so as to reflect how each member voted.

§ 987.36 Reimbursement.

All Council and Commodity Committee members, alternates, and subcommittees, including any special subcommittees, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of their duties under this subpart.

Research and Promotion

§ 987.40 Production research, market research, information, education, advertising, promotion, and market development.

(a) Each Commodity Committee shall in the manner prescribed in § 978.23 provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for, but not be limited to: Advertising, promotion, consumer education, and trade information, with respect to any one or more of particular vegetables and

products of such, and for the disbursement of necessary funds for such purposes;

(2) The establishment and conduct of research, market development projects and studies with respect to the production, sale, distribution, processing, marketing, or utilization, of one or more vegetables, and the creation of new products thereof, to the end that the production, marketing and distribution and utilization of a particular vegetable or vegetables and products thereof, may be encouraged, expanded, improved, or made more efficient and/or acceptable; and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of sales, both within the United States and in international markets, with respect to a particular vegetable or vegetables and products thereof.

(4) Each program or project authorized under paragraphs (a) (1) and (2) of this section shall be periodically reviewed or evaluated by the Council to insure that such program or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Council finds that a program or project is not effective, then the Council shall terminate such program or project.

(5) No reference to a private brand or trade name shall be made. No advertising, consumer education, nor sales promotion program shall make use of false or misleading claims on behalf of a particular vegetable or vegetables or the products thereof; or no such programs or projects shall make use of false or misleading statements with respect to the quality, value, or use of any competing commodity or product.

Expenses and Assessments

§ 978.50 Expenses.

Each Commodity Committee is authorized to incur such expenses including provision for an operating reserve as the Secretary finds are reasonable and are likely to be incurred by the Commodity Committee during each fiscal period for the maintenance and functioning of such Committee, including its proportionate share of the expenses of the Council, to enable it to exercise its powers and perform its duties in accordance with this subpart. Such expenses shall be paid from assessments received pursuant to § 978.51 and other funds available to the Committee, including donations.

§ 978.51 Assessments.

(a) Requirements for payment. Each signatory handler who first handles vegetables shall pay to the Council that handler's pro rata share of the Commodity Committee's expenses and the Council's overhead expenses authorized by the Secretary for each fiscal period. The payment of assessments for the maintenance and functioning of the Committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each vegetable during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment as necessary to cover authorized expenses. Such increase shall apply to all such vegetables handled during the fiscal period. In order to provide funds for the administration of this part, the Council may accept advance payments of assessments, which shall be credited toward assessments levied against such handler during the fiscal period. The Council may also borrow money for such purposes when assessment and reserve funds are not sufficient to cover them.

(c) There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be recommended by the Commodity Committees, subject to the approval of the Secretary.

§ 978.52 Accounting.

(a) If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each Commodity Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as an operating monetary reserve except that funds already in such reserve shall not exceed approximately three (3) fiscal periods' budgeted expenses or such lower limits as each Commodity Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Commodity Committee for (1) Expenses authorized pursuant to § 978.50 and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period, or be paid such refund upon demand.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be used, to the extent practicable, to continue one or more of the research projects, education or promotion programs hitherto authorized.

§ 978.53 Influencing governmental action.

No funds collected under this subpart shall in any manner used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 978.60 Reports.

(a) Each handler subject to this subpart shall be required to furnish to the manager of the Council, at such times and for such periods as the Council or Commodity Committee may designate, certified reports containing such information as is required by regulations and will effectuate the purposes of the Act. Such information may include but not be limited to the following:

(1) The name of the handler and the shipping point;

(2) The date of shipment;

(3) The number and type of containers in the shipment; and

(4) The quantities shipped shown separately by commodity.

(b) Upon request of the Council, with the approval of the Secretary, each handler shall furnish to the manager of the Council, in such manner and at such time as it may prescribe, such other information as may be necessary for the Council to perform its duties under this part.

§ 978.61 Books and records.

Each handler subject to this subpart shall maintain, and during normal business hours make available for inspection by employees of the Council and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 978.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 978.60 and 978.61

shall be kept confidential by all persons, including employees of the Secretary, and all officers and employees of contracting parties, and shall not be available to Council or subcommittee members and alternates or any other handlers, producers, wholesalers, or retailers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous

§ 978.70 Effective time.

The provisions of this agreement, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 978.76: Except that the Secretary shall not execute this agreement in regard to a particular vegetable until the agreement has been executed by persons who handle not less than 75 percent of the total quantity of such vegetable handled in such district during the most recent completed calendar year.

§ 978.71 Right of the Secretary.

Members and alternates of the Council, Commodity Committees, Executive Committee, subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Council and the Commodity Committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 978.72 Personal liability.

No member or alternate member of the Council, any Commodity Committee, any committee, or any subcommittee, nor any employee, representative or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, gross negligence or willfull misconduct.

§ 978.73 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 978.74 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 978.75 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the U.S. Department of Agriculture, to act as an agent or representative in connection with any of the provisions of this agreement.

§ 978.76 Suspension or termination.

(a) *Failure to effectuate policy of Act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever, the Secretary finds that such do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall terminate the provisions of this part as it pertains to a particular vegetable whenever the Secretary finds that such is favored by a majority of the signatory handlers who during the most recent crop year handled more than 50 percent of such vegetable in any district. Such termination shall become effective on the first day of January subsequent to such announcement by the Secretary.

(c) *Producer referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement, as it pertains to any vegetable, at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of the producers in a district of that particular vegetable who during the fiscal year have been engaged in the production of that vegetable in that district for the fresh market: Except that such majority has during such period produced for fresh market more than 50 percent of the volume of such vegetable produced for the fresh market within that district, but such termination shall be effective only if announced on or before November 1 of the then current fiscal period.

(d) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the Act authorizing them cease to be in effect.

§ 978.77 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any vegetable or vegetables, the Council then functioning shall for the purpose of liquidating the affairs of the Council with respect to such vegetable continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of termination.

(b) The said trustee shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of Commodity Committees under any contracts or agreements entered into pursuant to §§ 978.23 and 978.40; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and Commodity Committee, committees and subcommittees and also of the trustees to such persons as the Secretary may direct; and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the Council and Commodity Committees or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the research projects, information programs, or promotion programs hitherto authorized.

§ 978.78 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this

agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this agreement or any regulation issued thereunder, or (b) release or extinguish any violation of this agreement or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 978.79 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council.

(b) Funds generated by such patents, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council and Commodity Committees.

(c) Upon termination of the agreement, the Council shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 978.77 of this subpart.

§ 978.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Council, or by any interested person affected by its provisions, including the Secretary.

§ 978.81 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circustance, or thing, shall not be affected thereby.

§ 978.82 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 978.83 Additional parties.

After the effective date of this agreement, any nonsignatory handler may become a party hereto if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary. The obligations, benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 978.84 Withdrawal.

(a) Any signatory handler may withdraw from this agreement during November 1990, and every fifth year thereafter by filing with the Council and the Secretary written notice of such withdrawal. If it is determined, after such withdrawal period, that less than 75 percent of the total volume of a particular vegetable in any one district is subject to this agreement, the Secretary shall suspend the provisions pertaining to that particular vegetable or vegetables for that district.

(a) At such time as sufficient persons become signatories, representing at least 75 percent of the total volume of a particular vegetable handled for fresh market in any one district during the most recent calendar year, the Secretary shall reinstate the provisions applying to such vegetable for that district.

The undersigned hereby authorizes the Secretary to correct typograhical errors which may have been made in this marketing agreement.

In witness whereof, the contracting handlers, acting under the provisions of the Act, and for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals with respect to the commodities and the districts listed in Apendix A, which is made a part hereof.

Signature of party:

(Firm name)

(Address)

By:

(Name)

(Title)

Date of Execution (Corporate seal; if none, so state)

[FR Doc. 85-27885 Filed 11-22-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Curtains Made From Macrame and Voile

AGENCY: Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of curtain panels and valances imported from Holland. These imported curtains consist of French voile and East German burnt-out lace (referred to as macrame). The petitioner contends the current tariff treatment by Customs of the curtains and valances as products of Holland, and the imposition of the Column 1, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), rate of duty, is incorrect. Instead, the petitioner believes the curtains and valances should be treated as products of East Germany and assessed at the higher Column 2, TSUS, rate of duty. This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before January 24, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of "burnt-out lace furnishings," that is, a producer of curtains, valances and bedspreads made from imported voile fabric and burnt-out lace, herein referred to as macrame. The petitioner contends that virtually identical curtains and valances are being imported into the U.S. from Holland, and that these articles consist of Franch voile and East German macrame. The petitioner further argues that it is a mere assembly operation that takes place in Holland and that Customs determination that these curtains and valances are products of Holland is incorrect. Instead, the petitioner believes Customs should regard the curtains and valances as products of East Germany since the principal value, processing and workmanship in the finished goods is imparted by virtue of the macrame.

The change in tariff treatment that would result from adopting the petitioner's position is quite substantial. The merchandise in question is classified under the provision for burnt-out lace furnishings, in item 365.68, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202). Products of Holland classified under item 365.68, TSUS, are dutiable at the Column 1, TSUS, rate of 16% ad valorem, while similar products of East German origin are assessed duty at the Column 2, TSUS, rate of 90% ad valorem.

Description of the Merchandise

The imported merchandise that is the subject of this petition is curtains and valances which consist of various combinations of voile fabrics produced in France and macrame sections produced in East Germany of either 100% polyester yarn or a blend of silk and polyester. This voile is made to specifications which, in the petitioner's opinion, make it suitable for use exclusively in the home furnishings industry.

The macrame sections which are attached to the voile are produced in what the petitioner characterizes as "an enormously complicated, labor-intensive operation," which involves embroidery, chemical treatment, baking, and finishing. According to the petitioner, this macrame is also dedicated to use specifically as home furnishings since its weight and design make it unsuitable for any other use.

The voile from France and macrame which has come from East Germany arrive in Holland in bolts. There, the voile is cut into desired patterns which are combined with the macrame sections to form the finished curtains and valances.

Issues Raised

The petitioner has proffered two basic arguments in suppport of his position that these imported curtains and valances should be treated as products of East Germany. First, it is argued that the recently revised country of origin rules for textile products, which were published as T.D. 85-38 in the Federal Register on March 5, 1985 (50 FR 8710), dictate such a finding. According to the petitioner:

> Pursuant to § 12.130(d)(1), Customs Regulations (19 CFR 12.130(d)(1)), a "new and different article of commerce" does not result from the simple assembly operation performed in the Netherlands since there is no change in (i) commercial designation or identity, (ii) fundamental character or (iii) commercial use.

This is because the petitioner considers the attachment of the voile to the macrame in Holland as "irrelevant" to making the article a burnt-out lace furnishing. The petitioner states that the macrame bands alone are sometimes used as valances or curtains and do not lose their identity by having the voile attached to them.

The petitioner also believes the criteria of § 12.130(d)(2), Customs Regulations (19 CFR 12.130(d)(2)), establish East Germany as the country of origin of the curtains and valances since: (i) The physical change to the article as a result of the manufacturing process that takes place in East Germany is far greater than the change brought about by cutting and hemming in Holland, (ii) the time, complexity, and skill involved in the manufacture of macrame in East Germany are far greater than the time, complexity, and skill involved in the assembly operation in Holland, and (iii) the value of the macrame comprises from 33% to 76% of the value of the finished article.

The petitioner's second argument is that the application or relevent case law would result in a determination that East Germany is the country of origin of the curtains and valances. The reasoning advanced here, as it was stated in *Belcrest Linens* v. *United States*, 741 F. 2d 1368, [6 ITRD 1049] (Fed Cir. 1984), is that an article is the growth, produce or manufacture of an intermediary country if as a result of processes performed in that country, a new article emerges with a new name, use or identity. In this instance however, the petitioner believes that the voile and macrame are dedicated to their end use as furnishings when they leave France and East Germany respectively, and that a substantial transformation does not take place in Holland where the fabrics are subjected to nothing more than a minor assembly operation.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: November 12, 1985.

David D. Green,

Assistant Secretary of the Treasury.

[FR Doc. 85-28086 Filed 11-22-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 84-18; Notice No. 2]

Truck Size and Weight; Automobile Transporters

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to certain provisions established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This notice proposes: (1) a definition for an automobile-transporter, (2) a minimum 75-foot overall length limit for a stinger-steered automobile-transporter, (3) the allowance of triple saddlemount combinations with a minimum length of 65 feet, and (4) no overall length limitations for conventional tractor-semitrailer automobile transporters when the semitrailer is not longer than 48 feet. The purpose of these revisions is to clarify and further define certain issues contained in the June 5, 1984, final rule.

DATE: Comments on this docket must be received on or before January 9, 1986.

ADDRESSES: Submit written comments, preferably in triplicate, to FHWA Docket 84-18, Notice No. 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal

holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Chester F. Phillips, Office of Traffic Operations (202) 426-0323 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097, was published in the **Federal Register** on June 5, 1984 (49 FR 23302). This document represented the culmination of major efforts by the FHWA to implement the truck size and weight provisions of the STAA. The rule addresses, among many issues, automobile transporters pursuant to section 411(d) of the STAA by determining that auto transporters constitute special equipment and are not subject to the provisions of 23 CFR 658.13 (a) through (c). Section 658.13(d) provides requirements relative to overall length and allowable overhang. The final rule also noted our intent to initiate further rulemaking on this subject as soon as possible.

Further rulemaking was initiated through an Advance Notice of Proposed Rulemaking (ANPRM) issued on October 2, 1984, at 49 FR 38956. This Notice requested comments on off-tracking characteristics and other information particular to these issues. This NPRM proposes changes in the June 5, 1984, final rule based on a further review as well as from consideration of the comments received on the ANPRM.

There were 42 comments received in response to the ANPRM (Docket 84-18). Commenters can be generally classified as representing the industry (auto transporter companies—12, manufacturers or shippers—4, and related associations—4), the States (the transportation departments—17, and the highway agencies—3), and special interest groups (2).

The industry group supported the position expressed in comments submitted by the National Automobile Transporters Association (NATA) which requested (a) minimum overall length limitation of 75 feet for automobile transporters irrespective of trailer length and exclusive overhang and load securing devices, (b) a minimum allowable overhang of 7 feet combined front and rear, (c) inclusion of various types of identified equipment as auto transporters, (d) access to dealerships and secondary manufacturers, and (e) operation of triple saddlemount plus fullmount combinations of 75 feet. NATA stated that these requirements would increase productivity, increase flexibility and offset increased taxes.

The States supported maintaining the auto transporter dimensions and requirements set out in the June 5, 1984, final rule which included: (a) a minimum length limitation of 65 feet exclusive of overhang (this limit was equal to or greater than that allowed in most States), (b) a minimum overhang limitation of 3 feet in the front and 4 feet in the rear (4 feet is the maximum overhang allowed by most States), (c) allowance of saddlemount with fullmount combinations of at least 65 feet in length, (d) allowance to carry vehicles on the power unit of an auto transporter combination, (e) reasonable access equivalent to other STAA vehicles which allows State control over routing of the longer vehicles, and (f) longer equipment legally operating on December 1, 1982, must be allowed to continue operation.

This proposed rule is based upon considerations of vehicle safety and operating characteristics, productivity and economic factors and unique needs of the industry. We received no information reflecting any special safety problems with auto transporters. The 1984 National Safety Council Publication *Accident Facts* show that the accident rates for auto transporters, both truck-away (truck-trailer hauling vehicles) and drive-away (vehicle towing vehicle) operations, are among the lowest of the fleet accident rates.

Definitions

For clarity, two new definitions are proposed for addition to the regulation: that of auto transporter, and of the stinger-steered auto transporter tractor-semitrailer combination.

In the 1982 STAA, Congress referred to automobile transporters as an example of specialized equipment, but did not define any specific type of vehicle. Since many of the special equipment considerations, i.e., overhang, tie-downs, cargo carrying power unit, etc., are common to several types of auto transporter vehicles, a generic definition was developed. If a vehicle or combination was designed (or modified or built) and is used specifically for the transport of highway vehicles it is considered to be an auto transporter.

However, the definition is self-limiting through the use of the following words: (1) "vehicles" is used to indicate that the transporting of trucks, vans and buses, as well as automobiles, was included, (2) "highway" is used to exclude the transportation of golf carts, boats, riding mowers, construction equipment, etc., and (3) "assembled (capable of being driven)" is used to exclude the transportation of auto parts such as axles, cabs, etc., but not shipments of essentially complete vehicles to secondary manufacturers for modification or installation of cabs and special bodies.

Comments from the industry indicate that the vehicle traditionally referred to as a stinger-steered tractor-semitrailer combination constitutes a substantial portion of the auto transporter equipment. In this configuration the fifth wheel is located on a drop frame behind and below the drive axle(s) of the power unit, and several vehicles are carried over and, or, behind the power unit cab. Because the fifth wheel is located so far rearward and extends from the rear of the power unit, the semitrailer tracks more nearly the path of the power unit than in a standard tractor-semitrailer unit.

It was evident from several of the commenters that some were not familiar with the stinger-steered unit contained in the ANPRM was very accurate. The definition is therefore being included in the proposed regulations.

Conventional Tractor-Semitrailer Auto Transporter

In reviewing the comments and the June 5, 1984, final rule, it was determined that although there were few objections to a 65-foot overall length (exclusive of overhang), this length was shorter than that of many other STAA allowed tractor-semitrailer combinations, i.e., 22 to 24-foot tractor with a 48-foot semitrailer yielding overall lengths between 67 and 68 feet. FHWA proposes to alleviate this situation by eliminating the overall length requirement for the conventional tractor-semitrailer automobile transporters (fifth wheel located on tractor frame over rear axle(s)) and using the same minimum 48-foot semitrailer requirement as with other tractor semitrailer combinations. In addition, auto transporters would be allowed to carry cargo on the power unit via an over-cab rack. Further, the use of longer dimensioned auto transporter combinations which were allowed prior to STAA (December 1, 1982) is grandfathered. This grandfathering is applicable to dimensions.

"Low Boys"

The vehicle traditionally referred to as a "low-boy" was discussed by several commenters as a special type of auto

transporter. This vehicle can be characterized as a drop neck flat bed semitrailer generally associated with the transporting of heavy construction equipment. These specially modified units are usually engaged in the transport of vehicles to secondary manufacturers (where cabs or special bodies are installed) or to transport medium/heavy trucks. Further, it is obvious that this equipment has been built or modified especially to transport vehicles and therefore qualifies as an auto transporter. Since the operational characteristics of this combination are similar to those of other standard tractor semitrailer combinations, the rule proposes that the length requirements applicable be the same as for the conventional tractor semitrailer auto transporter.

Stinger-Steered Tractor-Semitrailer Auto Transporter

The numerous comments from the industry referred to the reduced off-tracking characteristics of the stinger-steered combination compared to the conventional tractor-semitrailer. This characteristic was acknowledged by several of the State commenters. Other State commenters were reluctant to agree to any longer lengths for the stinger-steered unit without more study. To assist in the further evaluation of this characteristic, FHWA had the University of Michigan Transportation Research Institute develop off-tracking curves for several tractor-semitrailer combinations. These computer generated curves showed that a 75-foot overall length stinger-steered unit is able to track in a manner at least equivalent to that of a conventional combination with a 48-foot semitrailer.

Information available does not suggest any safety problems with the stinger-steered unit, which industry notes makes up a substantial portion of the auto transporter fleet. The braking, acceleration, gradability and handling is considered to be equivalent to that of other STAA vehicles. Nevertheless FHWA is, by contract, having the jackknife/skidding potential of this combination studied. Results of this study will be available to consider along with the comments to this docket. Any information that others may have regarding special or different operating characteristics of this combination will be welcome and should be addressed to this docket. While a longer auto transporter, as with the other longer STAA vehicles, will probably carry heavier average loads, the Federal maximum legal gross weight and axle weight will still apply. Further, the variability in load configuration provided on both the power unit and the trailer of the stinger-steered unit has the potential for optimizing axle loads based on the vehicles being hauled. Reasonable access requirements for the stinger-steered combination, as for other auto transporters, are not changed from that set out in the Final Rule for other STAA vehicles. State and local size and weight laws govern beyond the Network and the reasonable access considerations.

Therefore, based on (1) the above noted operating characteristics, (2) the earlier mentioned safety record of auto transporters, (3) the potential productivity increase (the industry claims that this length allows more efficient loading and less enroute damage), and (4) the relatively small number of auto transporters in the overall medium/large truck fleet, FHWA is proposing a 75-foot overall length, exclusive of overhang, for the stinger-steered auto transporter combination.

Overhang and Exclusions

While most commenters considered a minimum total overhang of 7 feet to be both safe and reasonable, the industry requested the flexibility of distributing the 7 feet between the front and rear as best utilized for a particular load. Other commenters voiced concern that the front overhang, especially in conjunction with the over-cab rack, could interfere with the driver's view of signs, signals, etc. We find that the latter concerns are valid and no change will be made to the overhang provisions established in the June 5, 1984 final rule (i.e., no State may require less than 3 feet in the front and 4 feet in the rear).

Tie-downs or load securing devices usually extend beyond the over cab rack and the ends of the semitrailer. These devices are customarily considered to be safety devices and qualify for exclusion when making length determinations. In some cases these load securing devices are combined with a load extender device. As set out in the June 5, load extender devices are normally included when determining lengths. However, this combination device when used only as a load securing device is to be excluded in determining length.

Saddlemount (Drive-Away) With Fullmount

The drive-away operation is generally used in transporting new trucks. In this operation one or more trucks is connected to, and towed by, another truck. While a tow bar is sometimes used the connection is usually made by placing the front axle of the towed vehicle onto the frame of the towing vehicle and connecting it by way of a mechanism known as a saddle. The saddle functions much like a fifth wheel-kingpin connection. When two vehicles are towed in this manner the combination is referred to as a doublemount. Three towed vehicles would be a triplemount. When, as in some cases, a smaller vehicle is mounted completely on the frame of the last of the towed vehicles it is known as a fullmount.

The industry requested a minimum 75-foot triplemount length with fullmount. The States generally objected to the triplemount (vs. doublemount) and considered the 65-foot minimum length adequate. We note that the Bureau of Motor Carrier Safety (BMCS) regulations at 49 CFR 393.71(a)(3) require that for triple saddlemounts, "the towed vehicles shall have brakes acting on all wheels which are in contact with the roadway." This is not required for double saddlemounts. It is felt that the proposed requirement to allow triplemounts with fullmount of at least 65 feet in length is a safe and equitable balance considering the number of articulation points, the additional braking requirements, and the earlier noted low accident rate of the drive-away auto transporter fleet. FHWA believes the States are in a better position to determine whether a longer length is appropriate.

Reasonable Access

The industry commenters noted consistently that without access to dealerships and secondary manufacturers, any productivity increases with longer combinations would be negated. Conversely, a number of the States indicated that if auto transporter lengths were increased over that of the other STAA vehicles, they might reevaluate current access provisions. Although many dealerships and secondary manufacturers are located along arterials and major collector roads, many are also located in highly developed and congested urban areas. Further, nothing in the STAA 1982 guaranteed "maximum" load regardless of destination. The proposed access requirement for auto transporters allows reasonable access to destination equivalent to that allowed the 48-foot semitrailers. This is in line with the current regulations allowing the States to determine access provisions with FHWA oversight.

Those desiring to comment on this notice of proposed rulemaking are asked to submit their views in writing. Comments will be available for public inspection both before and after the

closing date at the above address. All comments received prior to the comment closing period of this notice will be considered before further rulemaking action is undertaken.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5 final rule, clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in the proposed rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 rule. Auto transporters make up a small segment of the total medium-heavy truck population (approximately 13,000 vehicles out of a total medium-heavy truck population of over 2 million). The stinger-steered units constitute an even smaller percentage. Productivity gains, although insignificant in the total picture, could be considerable for this minor constituency, but cannot be quanitified on the basis of available data. Safety considerations have been addressed in the above preamble. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the headquarters office of FHWA, 400 Seventh Street, SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grants programs-transportation, Highways and roads, Motor carrier-size and weight.

Issued on: November 19, 1985.

L.P. Lamm,

Deputy Administrator, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

In consideration of the foregoing, the FHWA proposes to amend Chapter 1 of Title 23, Code of Federal Regulations, by amending Part 658 as set forth below.

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313; 49 U.S.C. App. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraphs (l) and (m) as follows:

§ 658.5 Definitions.

* * * * *

(l) *Automobile Transporters*—Any vehicle or combination designed and used exclusively for the transport of assembled (capable of being driven) highway vehicles.

(m) *Stinger-steered Automobile Transporter*—A truck-tractor semi-trailer combination wherein the fifth wheel is located on a drop frame located behind and below the drive axle of the power unit. In this configuration vehicles are carried behind or both behind and above the cab of the power unit, as well as on the semi-trailer.

3. Section 658.13 is amended by revising paragraphs (d)(1), (d)(3), and (e) to read as follows:

§ 658.13 Length.

* * * * *

(d) *Specialized Equipment—Automobile Transporters.* (1) Automobile transporters are considered to be specialized equipment. In addition to the provisions of paragraphs (b) (1) and (3) of this section, automobile transporters may carry vehicles on an overhead rack on the power unit. No State shall impose an overall length limitation for a stinger-steered auto transporter of less than 75 feet. Vehicles with longer dimensions than those provided for in paragraphs (a), (b), and (c) of this section legally operating on December 1, 1982, are grandfathered and continued operation of all vehicles with such dimensions must be allowed.

* * * * *

(3) Drive-away saddlemount and fullmount mechanisms are considered as specialized equipment. No State shall impose an overall length limit of less than 65 feet on saddlemount and fullmount combinations. Triple saddlemount combinations shall be allowed when conforming to the 65-foot length limit and the applicable BMCS safety regulations at 49 CFR 393.71.

(e) The length limitations described in this section shall not include tie downs or the length-exclusive devices defined in § 658.5(e) or which the Secretary of Transportation may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no excluded device shall be used for carrying cargo.

* * * * *

[FR Doc. 85-28046 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[COTP San Diego Regulation 85-11]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area within 100 feet (30 meters) of Bravo Pier. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Commanding Officer, Naval Air Station North Island or the Captain of the Port.

DATE: Comments on this regulation must be received on or before January 9, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 AM through 4:00 PM Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port.

2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Docket 85–11) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Commanding Officer, Naval Air Station North Island, has requested that Captain of the Port, San Diego, California establish a security zone at Naval Air Station North Island Bravo Pier. This request was made to improve security at that location and to prevent vessels or persons from approaching Bravo Pier closer than 100 feet (30 meters) during ammunition handling operations. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commanding Officer, Naval Air Station North Island, to permit entry into this security zone.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a very small area outside all fairways and shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be no effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1106 is added, to read as follows:

§ 165.1106 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 feet (30 meters) of Bravo Pier, bounded by the following points:

(1) Latitude 32°41'51.3" N, longitude 117°13'34.0" W;

(2) Latitude 32°41'51.3" N, longitude 117°13'38.5" W;

(3) Latitude 32°41'45.8" N, longitude 117°13'38.5" W; and

(4) Latitude 32°41'45.8" N, longitude 117°13'35.0" W.

(b) *Regulations:* In accordance with the general regulations in 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: November 14, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 85–28043 Filed 11–22–85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–250–P]

Medicare Program; Home Health Agencies; Financial Security Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would implement sections 930 (n) and (p) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499). Section 930(n) authorizes the Secretary to require home health agencies (HHAs) participating in Medicare to meet conditions, including bonding or establishment of escrow accounts, to ensure the financial security of the Medicare trust fund. Section 930(p) excludes from Medicare reimbursement any costs incurred by an HHA in connection with bonding or establishing an escrow account. It also excludes interest payments made by an HHA that are charged on amounts borrowed to repay Medicare overpayments. The intent of these additional requirements is to assure the availability of funds to repay overpayments, and thereby ensure the financial security of the Medicare program.

DATE: To ensure consideration, comments should be received by January 24, 1985.

ADDRESS: Address comments in writing to: Department of Health and Human Services, Health Care Financing Administration, Attention: BERC–250–P, P.O. Box 26676, Baltimore, Maryland 21207.

Comments will be available for public inspection Monday through Friday, from 8:30 a.m. to 5:00 p.m., beginning approximately 3 weeks after publication in Room 309–G of the Department's office at the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–7890

Please address a copy of any comments that address information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for HHS.

If you prefer, you may deliver your comments to Room 309–G, Hubert H.

Humphrey Building, 200 Independence Ave., SW., Washington, D.C. or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Ward Pleines, (301) 597–6593.

SUPPLEMENTARY INFORMATION:

I. Background

Home health services are provided to the elderly and disabled under Medicare. They include an array of services such as professional nursing care, physical and occupational therapy, speech pathology, medical social services, home health aide services, and medical supplies and equipment. These services are delivered singly, or in combination, to aid in the recovery from an acute illness or to improved a patient's health status.

The Medicare statute limits reimbursement for home health services to providers of services who have qualified for a Medicare provider agreement as a home health agency (HHA). HHAs must meet all State and local licensure requirements as well as the Medicare conditions of participation. Currently, there are about 4,050 HHAs participating in the Medicare program and approximately 350 new HHAs enter the Medicare program each year. The majority of HHAs are visting nurse associations, other charitable organizations, and State and local public health departments, which had been providing home health services to the public before the enactment of Medicare in 1965.

With the provision of Medicare financing for these services, several new types of providers entered the home health services field. These new providers include private nonprofit agencies that are organized and operated by individuals, but which have achieved and maintained a tax-exempt status; and proprietary agencies agencies that are privately owned, profit-making agencies.

The home health program has grown rapidly since the inception of the Medicare program in 1964. In addition to the influx of these new providers into the program, both the utilization of home health services and the resultant expenditures for HHA services have been rising rapidly. Between 1977 and 1984, there was a 260 percent increase in the number of Medicare patients served (.5 million persons received home health services in 1977 as compared to 1.3 million in 1984). During these same fiscal years, we estimate that total expenditures for home health services have increased over 430 percent ($1.9 billion in FY 84 as compared to $441 million in FY 77).

A. Reimbursement of Home Health Agencies

Currently, under the Act, most providers furnishing health care services to Medicare beneficiaries, including HHAs, are paid on the basis of the lesser of the reasonable cost or the customary charges for those services. (Exception: Effective October 1, 1983, under the Social Security Amendments of 1983, payment to most hospitals for Part A inpatient operating costs will be based on a prospectively determined amount on a per discharge basis.) Since virtually all providers' charges exceed their costs, the discussion below refers to cost reimbursement. Section 1815(a) of the Act requires that interim payments for furnished services be made at such time, or times, as the Secretary believes appropriate, but not less often than monthly.

HCFA uses two methods to make interim payments to providers throughout the year. These are based on estimates of the reasonable cost of services to be furnished to beneficiaries during the year. Using the first method, the payments are determined by relating the estimated reimbursement to Medicare utilization as reflected by charges on submitted bills. As such, payments are made after the provider bills the program for services furnished to beneficiaries and the payment amount is related to the specific bills. Alternatively, a qualifying provider may receive its interim payments under the periodic interim payments (PIP) method. Under PIP, interim payments are not based on actual bills submitted, but are based on estimated annual costs attributable to the estimated Medicare utilization of the provider. Equal payments are made to the provider on a regular basis without regard to submitted bills. PIP offers a provider the advantage of a predictable level cash flow rather than payments that vary with actual fluctuations in the volume of services furnished. Adjustments are made at the end of the cost reporting period to reflect the actual amount due to an HHA based on its cost report, at which time any underpayments or overpayments for the period are corrected.

Any excess interim payment amount over actual costs, as determined by the Medicare fiscal intermediary, is an overpayment. Overpayments may occur for a variety of reasons, including: (1) The rates on which interim payments were based were calculated incorrectly or were based on inaccurate estimates of costs or utilization data; (a) the intermediary retroactively denies payment for services furnished to beneficiaries by the agency during the reporting period (payment may be denied because the beneficiary is found not entitled to the benefits, the services are not covered under Medicare, or for various other reasons); or (3) the intermediary, or for various other reasons); or (3) the intermediary denies payment for excessive or unnecessary costs found during the course of an audit. An existing overpayment is shown on the "Notice of Amount of Program Reimbursement" sent by the intermediary to the HHA at the time the intermediary makes final settlement on the HHA's cost report.

Since HHAs are generally established with very little capital investment and have little or no equity, an HHA overpaid by Medicare may have no financial resources available to repay the program. (See discussion of Congressional intent in House Budget Committee Report, H.R. Rep. No. 96–1167 (96th Cong. 1st Sess. (1980) 352, 353, 369, 370).) For example, in the case of an HHA which serves only Medicare beneficiaries, there may be no other source of income to use for this purpose. In the past, such an HHA has been allowed to borrow funds to repay the overpayment, and Medicare has reimbursed the HHA for its share of the costs related to the loan. Clearly, it is not in the best interests of the program to totally, or almost totally, finance a loan to repay itself. (As of December 31, 1983, there were 232 HHAs with outstanding overpayments in the amount of $6,576,959.)

B. Development of Legislation

Beginning in 1975, surveys, investigations, and hearings into the problems with furnishing home health services have highlighted the existence of many major problems with the program. Among the major investigative activities were hearings on Medicare and Medicaid in 1975, an investigation by Senator Lawton Chiles' Subcommittee on Federal Spending Practices, and various Departmental audits. Senator Chiles' Subcommittee issued a report in August 1976 recommending, among other things, that bonding be required for private non-profit HHAs and that 25 percent of an HHA's paients be non-Medicare eligibles. Most of the other hearings and investigations conducted during the late 1970s found that many of the problems with the delivery and reimbursement for home health services centered around the proprietary and individually operated non-profit HHAs.

Congress was concerned that providers, particularly providers with high Medicare utilization, would not have sufficient means to repay overpayments. this concern focused primarily on the problem of overpayments, and the interest charges reimbursed by the program when the agency borrowed funds to repay the overpayment. Thus, Congress enacted section 930(n) of Public Law 96-499, the Omnibus Reconciliation Act of 1980, which added section 1861(o)(7) to the Act (42 U.S.C. 1395x(o)(7)). That section provides the Secretary with authority to establish such additional requirements (including bonding and the establishment of escrow accounts) for HHAs as necessary for the financial security of the Medicare program. It empowers the Secretary to determine which HHAs should be subject to the requirements and the conditions to be met, such as the amount of the bond or escrow account.

In addition, section 930(p) of Pub. L. 96-499, which added section 1861(v)(1)(H) to the Act (42 U.S.C. 1395x(v)(1)(H)), provides that Medicare will not recognize as allowable costs, for reimbursement purposes, any costs that are incurred in connection with meeting the bonding requirement or establishing an escrow account. For HHAs determined to be subject to the financial security requirements imposed by the Secretary under section 1861(o)(7), Medicare will not recognize, as allowable costs, any costs attributable to interest charged an HHA in connection with amounts borrowed for the purpose of repaying overpayments. However, the statute does permit the Secretary to recognize such interest costs as allowable if the HHA acted in good faith in borrowing amounts to repay overpayments. We have decided not to include a good faith exception provision in these proposed regulations. Because we have recently issued separate regulations implementing section 117 of Pub. L. 97-248 (the Tax Equity and Fiscal Responsibility Act of 1982) which excludes interest costs on funds borrowed to repay overpayments for all providers (see 47 FR 54811), we believe that the need to apply a good faith exception has been obviated.

The policies we propose to follow in implementing the legislation are explained in section II. B. 2. below.

II. Provisions of the Regulations

A. Conditions Relating to Financial Security Requirements

These regulations would implement sections 930(n) and (p) by specifying both the conditions relating to financial security requirements, incuding HHAs affected, procedures, amounts, and similar requirements, and the provisions for excluding the stated costs from reimbursement. A detailed description of the requirements and our basis for the pertinent policies are set forth below.

1. Options Considered

In order to participate as an HHA in the program, a facility must meet all the requirements of section 1861(o) of the Act, which defines a home health agency. These requirements are set forth in the regulations as conditions of participation for HHAs, 42 CFR Part 405, Subpart L. As explained in section II. B. of this preamble, the new section 1861(o)(7) of the Act provides for imposition of financial security requirements. Therefore, we propose to amend the regulations in Subpart L by adding a new § 405.1231 entitled "Conditions of Participation: Financial Security Requirements". It should be noted that a subunit of an HHA, as defined in 42 CFR 405.1202(w), must meet the conditions of participation independent of its parent agency. Thus, these requirements would be applied to the parent agency and the subunit separately.

In deciding which HHAs should be subject to these requirements, we considered several options in an attempt to achieve a balance between adequate protection of the program against financial risk, and equitable treatment of HHAs (including avoidance of unnecessary strict requirements). We have concluded that some form of financial security requirement should be applied to HHAs entering the program, to HHAs already participating that have had substantial Medicare overpayments and to HHAs already participating that have high Medicare utilization. (For a discussion of the time period for which HHAs will be subject to the financial security requirements, see section II. A. 5.J. The options we considered and our reasons for the selected policy are as follows:

- We considered using HHA characteristics, such as number of years in the program, size, type of ownership, urban or rural setting or type of facility, to predict which HHAs are more likely to incur sizeable overpayments, as opposed to taking an approach based solely on financial history. Statistical evaluation of the factors, however, showed that the presence or absence of any of them could not be used reliably to predict the incidence of overpayments in the future.
- We considered increasing the frequency of intermediary reviews of designated high risk agencies' interim rate payments as an alternative to imposing financial security requirements on the agencies themselves. It was thought that more frequent reviews of interim rate payments would facilitate early detection of lower than projected utilization or overestimated costs and enable the minimization or avoidance of overpayments. However, this option was rejected because it misplaces responsibility for the accurate recording and reporting of costs with the intermediary instead of the provider. We believe this approach is unrealistic since only the provider has continuous and immediate access to the pertinent cost and utilization data required to determine the appropriateness of interim payment rates. We also believe that providers will be more careful in avoiding overpayments so as not to be required to maintain a bond or escrow account on an ongoing basis.
- We considered requiring all agencies to secure bonds or escrow accounts. However, data showed that all HHAs do not incur overpayments, and Congress made it clear that they were concerned not with *all* HHAs, but with those representing a poor risk. It, therefore, seems incumbent on us to attempt to identify those poor risk HHAs, and impose the requirements only on them. Moreover, we do not wish to impose unnecessary financial restrictions on agencies with no history of overpayments without having some other basis for considering them likely to become a risk.
- We considered imposing the requirements only on HHAs that were applying for participation in the Medicare program, because imposing the additional costs of the financial security requirements on established HHAs could interrupt care being provided to Medicare beneficiaries by restricting their cash flow. However, the intent of the new statutory provision is to safeguard the Medicare trust fund. The provision will furnish an incentive for HHAs to exercise care in avoiding overpayments. Limiting the requirements to HHAs applying for participation in the program would clearly not protect the program and achieve the goal Congress expressed since some established HHAs also incur overpayments.

2. Proposed Requirements

a. *Description of requirements.* After considering the options described above, we decided to propose the following financial security requirements:

(1) HHAs with less than three settled cost reporting periods of participation.

All HHAs that are applying for participation in the program (including newly acquired HHAs when changes of ownership occur) and HHAs that have not had three settled cost reporting periods under the program would need to obtain a bond or establish an escrow account (see discussion in sections II. A. 3. and 4., respectively, for descriptions of what constitutes a bond and an escrow account).

Any HHA applying for participation in the program that has not received final approval for participation before the effective date of these regulations would not be approved until the pertinent requirement (i.e., bond or escrow account) is met.

(2) Participating HHAs with significant overpayments. HHAs that have had a significant overpayment within the previous 3 settled cost reporting periods and have not made repayment within 30 days of receipt of the Notice of Amount of Program Reimbursement without borrowing funds to do so, would have to obtain a bond or establish an escrow account. If the HHA cannot do so, HCFA would initiate proceedings to terminate the HHA's participation.

A significant overpayment is one that equals or exceeds 15 percent of the total Medicare reimbursable costs for any one settled cost reporting period. We derived this 15 percent figure after reviewing available HHA overpayment data. However, if after review of more current overpayment data, we determine that an adjustment of this amount is warranted, we may do so in the final rule.

(3) Participating HHAs with high Medicare utilization. HHAs with a Medicare utilization rate of 85 percent or higher (85 percent or more of visits provided) would be required to obtain a bond or establish an escrow account or demonstrate that they do not represent a sufficient financial risk to require a bond or escrow account. A high utilization agency could satisfy the financial security requirements by demonstrating that it did not have an overpayment of the size we are considering to be significant in the periods in question, or, if it did have such an overpayment, by documenting that it did not borrow funds to repay the overpayment, and that it repaid the overpayment within 30 days. Nevertheless, as a separate financial security requirement, all high utilization HHAs would also have to agree to disclose separately any borrowing of funds in order to repay Medicare overpayments in future periods.

(4) Participating HHAs required to obtain a bond or establish an escrow account. Participating HHAs would obtain a bond or establish an escrow account within ninety days of being notified that they are required to do so.

b. Reimbursement effect of requirements. For any HHA, even an HHA not subject to the financial security requirements, the cost of obtaining a bond or escrow account would not be reimbursed.

c. Discussion. (1) HHAs with less than three settled cost reporting periods under Medicare. We would apply the bonding or escrow account requirement to all newly participating HHAs, including all HHAs that have not had three cost reporting periods under the program, because we do not have any reliable way of predicting financial performance under Medicare to the extent necessary to make distinctions as to which of these HHAs should or should not be subject to the requirement. We recognize that this requirement may discourage some entrepreneurs from entering the marketplace. However, we believe this disadvantage would be outweighed by the benefit over time to the program. This requirement would simply either set a minimum "untouchable" capital reserve, or ensure the ability of another (independent of Medicare) to indemnify the program if an HHA is unable to repay an overpayment on its own. This would assure that the HHA is capable of absorbing a certain amount of loss (e.g., denied costs) without becoming financially unstable. We think that applying this standard before an HHA enters the program or before an HHA completes three settled cost reporting periods of participation would reduce the number of HHAs that subsequently go out of business due to their inability to absorb losses, leaving patients who are dependent on the HHA's services without care, and leaving the Medicare program without a source of repayment of amounts due it.

However, we invite public comment on the question of whether to apply these financial security requirements to all newly participating HHAs and to HHAs which are currently participating in Medicare but which have not had three settled cost reporting periods. We would especially like to have any suggested alternatives on how to apply the requirements, or any data that might be available that would assist us in determining which new HHAs would represent a financial risk.

(2) Participating HHAs. As stated above, the participating HHAs that would be subject to some form of financial security requirement are those with significant overpayments and those with high Medicare utilization.

However, we recognize that the relative risk presented by these HHAs may very. Therefore, we have established two different financial security requirements, each of which is intended to assure that the program would be adequately protected from risk of loss without imposing requirements disproportionate to that risk. We believe that HHAs with a significant overpayment history present a demonstrated significant risk, and therefore, should be required to have a bond or escrow account. High utilization HHAs do not all present this degree of risk, and therefore, a lesser requirement may suffice.

(i) High utilization HHAs. The legislative history indicates that Congress was especially concerned about the risk presented to the program by participating HHAs with very high proportions of Medicare patients. This interest suggests that the percentage of Medicare utilization should be considered in diciding whether or not an HHA should be subject to the financial security requirements. However, we do not feel that this concern warrants requiring all these HHAs to obtain a bond or escrow account, because imposing the bonding and escrow requirements based solely on utilization ignores an HHA's actual overpayment history. This means that an HHA might be required to obtain a bond or escrow account because of its utilization, even though it has never been overpaid. It would also have to maintain the bond or escrow account until its Medicare utilization dropped below the cut-off point (85 percent), even if it never incurs an overpayment. In light of the number of HHAs in the program with high utilization, we realize that such a requirement to obtain a bond or establish an escrow account might prove detrimental to the industry as a whole, which in turn would have an adverse effect on Medicare beneficiaries access to care.

Additionally, the fact that an HHA derives only minimal income from non-Medicare sources does not indicate that high utilization actually leads to overpayments. However, it does indicate a strong possibility that the HHA could not repay an overpayment without borrowing. We have decided, therefore, that these HHAs should be subject to the financial security requirements, but that those presenting a lesser risk should be given an alternative to the bonding and escrow requirements. Under this alternative, high utilization HHAs would have to (1) demonstrate that they have not incurred a significant overpayment during the

periods in question (see discussion in section I. B. 2. a. (5)), or (2) if they did have such an overpayment, they would document that they did not borrow funds to repay the overpayment, and that they repaid the overpayment within 30 days. As a separate requirement, all high utilization HHAs would agree to disclose separately any borrowing of funds in order to repay future Medicare overpayments.

(ii) HHAs with significant overpayments. We believe that HHAs with a significant overpayment history present a significant risk to the financial security of the program, and therefore, should have a bond or escrow account.

We believe that applying the bonding and escrow requirements to all HHAs (including high utilization HHAs) with significant overpayments is in accordance with Congressional intent in protecting the program against those HHAs representing the greater potential financial risk. Some of these HHAs were unable to repay their overpayments promptly, which indicates considerable insecurity in their financial position. These HHAs also deprive the program of the use of program funds during the period of repayment.

As stated above, we propose that a significant overpayment is one that equals or exceeds 15 percent of the HHA's total Medicare reimbursable cost for the reporting period. We established that figure based on a review of overpayment data for existing HHAs. These data showed that this level would result in the requirements being imposed upon HHAs that account for almost half of the total overpayment amounts. Thus, establishing the limit at this level would adequately protect the program from a significant portion of the loss due to overpayments.

Our data also indicated that few existing HHAs actually exceed this level (only about nine percent in the period we studied), and, therefore, the number of HHAs subject to this requirement would be as low as possible, and would still be consistent with the intent of the legislation.

We would require HHAs that have had a significant overpayment in any one of the last three cost reporting periods to obtain a bond or establish an escrow account. We believe that considering significant overpayments occurring in any one of the last three periods would be appropriate because an accurate picture of an HHA's overpayment history could be obtained only by looking at several preceding years.

The 15 percent amount specified above is relatively high in relation to the average overpayment. We think that an overpayment of that percentage at any time in the recent past indicates a degree of risk to the Medicare program that supports application of a bonding or escrow requirement. For the same reason, we think that, whenever a similar overpayment occurs in the future, an HHA should be required to obtain a bond or establish an escrow account at that point.

3. Bonding

The term "bond" is used to refer to a surety bond or a guaranty agreement.

a. A *surety bond* is a binding agreement between the HHA and a bonding agency by which the agency agrees to indemnify the HHA against Medicare overpayments. The bonding agency must hold itself out to the public as providing bonding services, or may be an industry organization that provides this service as an accommodation to its members. It must also be in compliance with State licensure requirements, as applicable. An HHA would be considered to have secured a bond when it has submitted to the State survey agency (that is responsible for determining whether HHAs meet the Medicare participation requirements) written confirmation by the bonding agency that a bond has been secured. The confirmation must (1) state the amount of the bond or letter of credit (see following paragraph); (2) specify that payment will be made only to the fiscal intermediary under the bond or letter of credit on receipt of a Medicare overpayment notice (a) Notice of Amount of Program Reimbursement); and (3) show the period for which the bond or letter of credit will be in effect (the period must extend at least to the first date on which the HHA could comply with the retention requirements described in section II. A. 5.). The bonding agent must, of course, be capable of performing on the bond.

A surety bond could also consist of an irrevocable letter of credit. This would be obtained by an HHA through a bank, and would provide a line of credit that HCFA could draw on directly in order to recoup overpayments. The State survey agency would review each arrangement to assure that it is acceptable.

b. A *guaranty agreement* is an agreement by an individual or organization other than the HHA to be responsible for any overpayment incurred by an HHA in the event it is unable to repay the program in a timely fashion. The guaranty would be limited to the amount of surety bond that the HHA would otherwise have to obtain. The guaranty agreement must be legally binding on the individual or organization.

Since the intent of the statute was to provide protection to the Medicare program, a guaranty agreement will not be an acceptable substitute for a surety bond or escrow account unless the individual or organization is capable of prompt performance on the obligation. Therefore, since there is a financial judgment to be made, a guaranty agreement would be accepted only after documentation as described below is submitted to, and accepted by, the HHA's fiscal intermediary. The documentation would then be forwarded to the State survey agency by the intermediary. If the documentation is not submitted by the HHA, or is found by the fiscal intermediary to be insufficient evidence of the guarantor's ability to perform on the obligation, the HHA would be required to obtain a surety bond or establish an escrow account in order to comply with the requirements. The guaranty agreement must contain the same information as the confirmation of surety bond discussed above.

The nature of the financial documentation should be in keeping with the size and complexity of the guarantor. Thus, an individual would not be expected to provide detailed audited financial statements, but a large corporation with publicly traded stock would. However, an individual would be required to submit documentation sufficient to assure an ability to perform.

Assets and revenue belonging to or being produced by the HHA must be separately identified, to determine the guarantor's financial position independent of the HHA. A guarantor whose revenue is almost totally derived from an HHA's operation would not be in any better position to repay an overpayment than the HHA itself. An HHA could not be its own guarantor because this would not provide any additional protection to the program. Since HHAs are already legally bound to repay Medicare overpayments, such a guaranty would be a repetition of a pre-existing legal duty.

4. Escrow account with lending institution.

An escrow account is a sum of money belonging to an HHA that is on deposit in, and under the control of, a bank or lending institution. An HHA would be considered to have an escrow account when the HHA has submitted to the State survey agency written confirmation from the institution holding the escrow. The confirmation must state (1) the amount of money in escrow; (2) the time period for which the account will be established (this period will be

the same as for a bond); (3) that the HHA cannot withdraw the money; and (4) that the holding institution is authorized to release escrow funds from this account only in repayment of Medicare overpayments.

There are situations in which an established HHA would face financial hardship in making a lump sum deposit in an escrow account. In these cases, the intermediary and HHA could negotiate an agreement under which the intermediary would deposit a portion of the HHA's interim payments directly into an escrow account established by the HHA. In setting the amount of payment to be withheld and the period over which payment would be withheld, the intermediary would consider such circumstances as existing withholding of interim payments for other reasons; for example, an overpayment being repaid that occurred before the enactment of the statute. The allowable period over which payments could be withheld and deposited into an account would be restricted to six months. The intermediary would make initial determinations regarding financial hardship when this regulation becomes effective, and, thereafter, when an HHA is recertified for participation in the program. Such a finding may, for example, be appropriate when an HHA is repaying an outstanding overpayment.

The option of intermediary deposits to an escrow account would be available to already participating HHAs as an alternative to interrupting existing patterns of care when an HHA cannot comply with the requirements in any other way. The option would not be available to newly participating HHAs, because we believe that funding an escrow account in a lump sum represents a minimal level of capitalization for those HHAs.

5. Time Period for Retention of Bond or Escrow Account

a. *Newly participating HHAs and HHAs with significant overpayments.* Newly participating HHAs that have not had three settled cost reporting periods in the program would be required to secure a bond or establish an escrow account for the uncompleted portion of the three year period. Those HHAs applying for participation and HHAs (including high utilization HHAs) that have incurred significant overpayments that are required to secure a bond or establish an escrow account would be required to keep the bond or escrow account until the HHA had not incurred a significant overpayment (as evidenced by a Notice of Amount of Program Reimbursement) for three consecutive reporting periods. For example, if an HHA incurred an overpayment three reporting periods before the effective date of these regulations, the HHA would maintain a bond for one more period in which there is no significant overpayment. Since the bonding or escrow requirement would apply, under these regulations, only to newly participating agencies or those that have large overpayments, we think it is essential for the protection of the Federal trust funds to require compliance with the requirements for a reasonable period. We believe three reporting periods is sufficient time for the HHA to demonstrate that the likelihood of future financial problems is small.

Some consideration was given to requiring a shorter time period for retention of a bond or escrow account for newly participating agencies. We had considered imposing the requirements on new agencies for a one-year period. However, after further consideration, we believe one year or even a two-year requirement would be insufficient experience upon which to determine that the Medicare trust fund is adequately protected.

However, we would appreciate public comments on the question of the amount of time an HHA should be required to have a bond or an escrow account.

b. *High utilization HHAs.* Notwithstanding any other provision of the financial security requirements, a high utilization HHA would continue to be subject to the financial security requirements until its Medicare utilization drops below 85 percent for three consecutive reporting periods.

6. Amount of Bond or Escrow Account

An HAA's fiscal intermediary will determine the required amount of a bond or escrow account and then inform the State survey agency of the amount. The amount of the bond or escrow account that would be necessary for compliance with this requirement would be calculated as follows:

a. Newly participating HHAs must provide a bond or escrow account equal to 10 percent of their projected first-year Medicare costs. The projected costs to be used are those the HHA submits as a basis for setting interim rates and that are accepted for that purpose by the fiscal intermediary. First-year costs mean costs for a 12-month period, or costs for less than a 12-month period that are annualized for a full year.

The amount we selected is two-thirds the amount we have proposed as a significant overpayment. While we believe the amount of the bond or escrow account should relate to what we consider to be a significant overpayment, we are also mindful that not all of these HHAs will actually incur significant overpayments. Moreover, if an HHA does incur a significant overpayment, the amount of the requirement for the next year would be raised to that amount.

b. Participating HAAs that have been overpaid significantly in any one of the last three reporting periods would be required to provide a bond or escrow account equal to the amount of the largest significant overpayment incurred over those periods.

c. If an overpayment occurs that exceeds the amount of the existing bond or escrow account, the HHA would be required to increase the amount of the bond or escrow account, to equal the amount of the latest overpayment if the overpayment is not repaid within 30 days without borrowing to do so. If the HHA fails to repay the overpayment, the fiscal intermediary will notify the State survey agency within 30 days of the additional amount by which the bond or escrow account must be increased for the current cost reporting period.

7. Time Limit for Repayment of Overpayments and Replacement of Bond and Escrow Account

The proposed regulations provide that HHAs that are required to secure a bond or establish an escrow account would be subject to the regular Medicare time limits on repayment of an overpayment. That is, if any overpayment occurs, the HHA would be required to pay back the amount owed within 30 days of notice of overpayment from its fiscal intermediary, either from its own funds or by using the bond or escrow account. This time limit for repayment of overpayments is the same as that specified in section 4–70–60 of the Departmental debt collection procedures published September 17, 1980 (see 45 FR 61792). This period is consistent with the grace period provided in 42 CFR 405.376, which relates to interest on overpayments to Medicare providers of services, and the period found in 4 CFR 102.2, promulgated pursuant to 31 U.S.C. 3711, which deals in general with repayment of debts owed the Federal government.

If the HHA uses money obtained from the bond or escrow account to repay the overpayment, the HHA must renew the bond, replace the money in the escrow account or negotiate a satisfactory arrangement with the intermediary for depositing a portion of interim payments to the HHA's escrow account within ninety days. If the HHA does not renew the bond or replace the escrow account,

termination proceedings would be instituted.

B. Exclusion of Certain Costs From Medicare Reimbursement

As described above, section 930(p) of Pub. L. 96–499 added a new section 1861(v)(1)(H) to the Act providing that the reasonable costs of HHAs reimbursed by Medicare may not include the following costs: (a) Those incurred to meet the bonding or escrow requirements; and (b) in the case of HHAs that are subject to the financial security requirements, any interest charges incurred in connection with amounts borrowed for the purpose of repaying Medicare overpayments. The statute also provides for a "good faith" exception to the latter prohibition. As explained in section I. A. 2. b., however, we have not provided for a "good faith" exception in these proposed regulations.

We are proposing to amend 42 CFR 405.402(c), which deals in part with the general definition of reasonable cost, by adding a new paragraph (c)(10) that excludes, in the case of HHAs, any costs incurred in connection with bonding or establishing an escrow account.

We had also intended to amend 42 CFR 405.419, Interest Expense, to exclude from reasonable cost reimbursement any interest expenses incurred by HHAs in connection with amounts borrowed by the HHA to repay Medicare overpayments. However, the regulations we issued on December 6, 1982 (47 FR 54811) amended § 405.419 to exclude such interest costs for all providers, and obviated the need to include an additional amendment to the regulations that specifically addressed HHAs.

C. Other Reimbursement Issues

1. General

Several other reimbursement issues arise in connection with HHAs that establish an escrow account. The first issue is whether interest earned by an HHA on an escrow account must be considered as interest revenue and used to offset interest expense, thus reducing Medicare reimbursement. The other issue is whether the escrow account will be considered an asset for purposes of calculating return on equity capitalfor proprietary HHAs.

2. Interest expense

It is a general Medicare policy (42 CFR 405.419(b)(2)(iii)) that interest revenue be used to reduce interest expense that Medicare will recognize as reimbursable costs. This is intended to prevent situations where providers borrow money, invest it, and receive both the investment income and Medicare reimbursement for the borrowing costs.

We believe the general policy should not be applied to this situation. Section 405.419 was intended to control voluntary investment and unnecessary borrowing. These proposed requirements involve involuntary investment by HHAs, and it would be inequitable to require an HHA to invest funds and then use the interest revenue to reduce other costs. Therefore, we propose to amend 42 CFR 405.419(b)(2)(iii) to exempt interest revenue from an escrow account established under these requirements from the general rule pertaining to interest offset. This interest revenue exemption is consistent with the exclusion from costs of the expenses incurred in connection with establishing the escrow account or bond. Neither the cost of, nor the income from, an escrow account would have any effect on Medicare costs.

3. Return on equity capital

Under Medicare, proprietary providers receive a return on net equity invested which is intended to avoid withdrawal of capital and to attract capital for expansion (42 CFR 405.429). The return is based on the average equity invested for the period. In order to be considered a part of net equity for purposes of the return, net assets included must be related to patient care activities.

Because we are treating costs and revenues relative to bonds and escrow accounts as unrelated to patient care and having no impact on Medicare reimbursement, these funds would not be included in the equity capital calculation. We would revise 42 CFR 405.429(b)(1) to that effect.

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that Order. Under the requirements of the Order, an analysis must show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

As discussed below, we have determined that the threshold criteria of the Executive Order are not met by any of the provisions contained in this proposed rule and, therefore, a formal regulatory impact analysis is not required. However, we have included a voluntary regulatory analysis that will examine some of the significant issues related to the bonding and escrow provision. We are soliciting comments and factual information that will enable us to more accurately describe and quantify the effects of the rule in the impact analysis of the final rule.

Our data indicate that about 2,620 HHAs (520 because of significant overpayments and 2,100 because they are either newly participating or have completed less than three cost reporting periods), would be subject to the bonding and escrow requirements in the first year of implementation. If we were to project that past trends regarding the number of newly participating agencies (700 per year) and the number of agencies that report significant overpayment (9 percent of all HHAs each year) would continue unabated during the next 2 to 3 years, within three years after implementation of this proposal up to 4,560 HHAs could be affected. However, we expect the rate of entry of new HHAs may decrease, as may the number of agencies experiencing overpayment.

For HHAs that obain a bond, we estimate a one-time cost of about $20 per $1,000 of bond amount to obtain a bond (this figure was received from bond industry sources). Using these cost figures, the aggregate industry impact of purchasing bonds would be no greater than $2.75 million during the first fiscal year (up to $745,000 for HHAs with significant overpayments and up to $2,007,000 for those that are either newly participating or have completed less than three cost reporting periods). This estimate is derived by assuming that for a newly participating HHA or an HHA that has completed less than three cost reporting periods, an average total bond amount during the first year (at 10 percent of the average projected Medicare reimbursement of $478,000) would be $47,800. Therefore, the first year cost to a newly participating HHA of $20 per $1,000 of bond amount would result in an average cost of $956 per HHA to obtain a bond. For those HHAs that report significant overpayments, we assume an average bond amount of at least $1,434 (15 percent of $478,000 at $20 per $1,000 of bond amount). Multiplying the $1,434 figure by 520 (HHAs with significant overpayments) and $956 by 2100 (newly participating HHAs and HHAs with less than three cost reporting periods), and summing the results, yields a maximum industry

impact of $2.75 million during the first fiscal year.

In subsequent years, we expect the cost of obtaining a bond to increase since the average amount of payments to an HHA will continue to increase and the cost of a bond is relative to the increase in Medicare costs. However, we anticipate the aggregate industry expense to decline since only an estimated 700 additional newly participating agencies will, each year, incur the one-time expense of obtaining a bond.

For those HHAs that choose to open an escrow account, we anticipate negligible administrative costs to an HHA to transfer funds to the financial institution.

We believe that these costs would be more than offset by several expected benefits. Primary among these benefits is the safeguarding of the Medicare trust fund by ensuring that the incidence of non-recoverable overpayments is reduced. These requirements are needed to prevent future losses to the program in the case of those HHAs who face closure and are unable to repay their Medicare overpayments. (For example, as of March 1985, there were outstanding HHA overpayments of $20,648,000).

Another benefit would be the continued financial solvency of many HHAs that would otherwise face closure due to overpayments. HHAs, especially freestanding facilities, are generally established with little capital investment and usually have little or no equity. Often these agencies have no financial resources to repay the program in the event of an overpayment. We believe that this proposal would strengthen the status of many undercapitilized HHAs.

Likewise, the health status of some beneficiaries could be jeopardized by the interruption of services because of an unexpected closure of an HHA. This proposal would protect beneficiaries receiving care from HHAs, since they could be guaranteed continued provision of care as a result of this stabilizing effect on the home health industry.

In summary, we conclude that the benefits of this proposed rule exceed the potential costs. Earlier in this preamble we discussed other alternative approaches in implementing this proposal and determined, that even apart from any costs to affected HHAs, this proposal would maximize net benefits to the Medicare program, the home health industry and to affected beneficiaries.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires us to prepare and publish a regulatory flexibility analyais for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. A regulatory flexibility analysis must show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

We have determined that the impact of this provision does not meet the threshold criteria and, therefore, a formal regulatory flexibility analysis is not required. However, as with the Executive Order analysis, we are providing a voluntary regulatory flexibility analysis to discuss some of the significant issues related to this provision.

In section I. B. of this preamble (Development of Legislation), we describe the reasons why we considered this initiative. We discussed Congressional concern that HHAs would not have sufficient means to repay overpayments and that such occurrences would jeopardize the financial security of the Medicare program. A succinct statement of the objectives of, and legal basis for this provision are also discussed in section I. B. of the preamble.

Of the approximately 5,800 certified HHAs, we estimate that up to 2,620 agencies will be required to obtain a bond or open an escrow account during any given fiscal year. As noted in the Executive Order analysis, we estimate an average cost of about $956 for newly participating HHAs and at least $1,434 for an HHA reporting a significant overpayment, to obtain a bond. The bond cost represents an impact of two-tenths to three-tenths of one percent of estimated benefit payments to HHAs in FY 1986, is not a significant amount of money relative to average Medicare reimbursement to individual HHAs of $478,000. We also estimate a negligible cost to open an escrow account for those HHAs that select this option.

Finally, in section II. A., we discussed alternatives considered and the reasons we rejected them. In reaching these decisions, we attempted to achieve a balance between adequate protection of the program against financial risk, and equitable treatment of HHAs (including avoidance of unnecessarily burdensome requirements).

Therefore, we have determined, and the Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these proposed regulations will not have a significant impact on a substantial number of small entities.

IV. Collection of Information Requirements

Section 405.1231(e) of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget for its review of these information collection requirements.

V. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to the issues in the preamble to that rule. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Executive Office Building (Room 3208), Washington, D.C. 20503, Attention: Desk officer for HHS.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405 is proposed to be amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Subpart D, *Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians*, is amended as follows:

a. The authority citation for Part 405, Subpart D continues to read as follows:

Authority: Sec. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886 and 1887 of the Social Security Act as amended; 42 U.S.C. 1302, 1395f(b), 1395(g), 1395l(a), 1395x(v) and 1395hh, 1395rr, 1395ww, and 1395xx.

b. Section 405.402 is amended by adding a new paragraph (c)(10) to read as follows:

§ 405.402 Cost reimbursement; general.

* * * * *

(c) * * *

(10) Costs incurred by a home health agency in securing a bond or establishing an escrow account for purposes of assuring the availability of

funds to repay an overpayment, as specified in § 405.1231, are not included as allowable costs.

c. Section 450.419 is amended by revising paragraph (b)(2)(iii) as follows:

§ 405.419 Interest expense.

* * * * *

(b) *Definitions.* * *

(2) *Necessary.* Necessary requires that the interest:

* * * * *

(iii) Be reduced by investment income except where such income is from gifts and grants, whether restricted or unrestricted, and which are held separate and not commingled with other funds. The following types of income are not used to reduce interest expense:

(A) Income from funded depreciation or provider's qualified pension fund;

(B) Interest received as a result of judicial review by a Federal court (as described in § 405.454(l)); and

(C) Interest received from an escrow account established under the authority of section 1861(o)(7) of the Social Security Act (see § 405.1202(aa) for definition of escrow account).

Section 405.429 is amended by revising paragraph (b)(1) to read as follows:

§ 405.429 Return on equity capital of proprietary providers.

* * * * *

(b) *Application—(1) Computation of equity capital.* Proprietary providers generally do not receive public contributions and assistance of Federal and other governmental programs in financing capital expenditures. Proprietary institutions historically have financed capital expenditures through funds invested by owners in the expectation of earning a return. A return on investment, therefore, is needed to avoid withdrawal of capital and to attract additional capital needed for expansion.

(i) For purposes of computing the allowable return, the provider's equity capital means:

(A) The provider's investment in plant, property, and equipment related to patient care (net of depreciation) and funds deposited by a provider who leases plant, property, or equipment related to patient care and is required by the terms of the lease to deposit such funds (net of noncurrent debt related to such investment or deposited funds; and

(B) Net working capital maintained for necessary and proper operation of patient care activities. However, debt representing loans from partners, stockholders, or related organizations on which interest payments would be allowable as costs but for the provisions of § 405.419(b)(3)(ii), is not substracted in computing the amount of equity capital as defined in paragraph (b)(1)(i) of this section and this paragraph (b)(1)(ii), in order that the proceeds from such loans be treated as a part of the provider's equity capital. In computing the amount of equity capital upon which a return is allowable, investment in facilities is recognized on the basis of the historical cost, or other basis, used for depreciation and other purposes under the health insurance program.

(ii) Funds that a home health agency has placed in an escrow account as specified in § 405.1231 are not related to patient care, are excluded from reasonable cost determinations by virture of section 1861(v)(1)(H) and are not included in the computation of return on equity capital.

2. Subpart L, *Conditions of Participation: Home Health Agencies,* is amended as follows:

a. The authority citation for Part 405, Subpart L continues to read as follows:

Authority: Secs. 1102, 1842, 1861, 1862, 1870 and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395u, 1395x, 1395y, 1395gg, 1395hh.

b. In § 405.1201(a), the introductory text is revised as follows:

§ 405.1201 General.

(a) In order to participate as a home health agency in the health insurance program for the aged, an institution must be a "home health agency" within the meaning of section 1861(o) of the Social Security Act. This section of the law states a number of specific requirements which must be met by participating home health agencies and authorizes the Secretary of Health and Human Services to prescribe other requirements considered necessary in the interest of health and safety of beneficiaries. Section 1861(o) of the Act reads as follows:

"(o) The term 'home health agency' means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) Is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) Has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physican or registered professional nurse;

(3) Maintains clinical records on all patients;

(4) In the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) Has in effect an overall plan and budget that meets the requirements of subsection (z);

(6) Meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individual who are furnished services by such agency or organization; and

(7) Meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program; except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases."

* * * * *

c. Section 405.1202 is amended by removing the lettered paragraph designations (so that the definitions are listed alphabetically) and by adding in alphabetical order the definitions of "bond", "escrow account", and "significant overpayment" to read as follows:

§ 405.1202 Definitions.

* * * * *

Bond. The term "bond" is used to refer to a surety bond or to a guaranty agreement. A surety bond is a binding agreement between a HHA and a bonding agency or industry organization by which the bonding agency or industry organization agrees to indemnify the HHA against Medicare overpayments. A surety bond may also consist of an irrevocable letter of credit issued by a bank or lending institution that HCFA can draw on exclusively. A guaranty agreement is a binding agreement by an individual or organization other than the HHA to be responsible for any overpayment incurred by the HHA.

* * * * *

Escrow account. A sum of money belonging to an HHA that is on deposit with a bank or lending institution and is under the control of the bank or lending institution for the express purpose of reimbursing the Medicare trust funds

any overpayment amounts unable to be paid by the HHA.

* * * * *

Significant overpayment. An overpayment in an amount that is equal to or exceeds 15 percent of the HHA's Medicare reimbursement for a cost reporting period, unless the HHA repaid the amount within 30 days of issuance of the Notice of Amount of Program Reimbursement without borrowing the funds to do so.

* * * * *

d. A new § 405.1231 is added to read as follows:

§ 405.1231 Conditions of participation: Financial security requirements.

The HHA provides evidence to assure that funds are available to repay overpayments made to the HHA.

(a) *Standard: Applicability.* The requirements of this section apply to the following HHAs:

(1) HHAs that are applying for participation in the program (e.g., newly participating HHAs or newly acquired HHAs when changes of ownership occur) or that have not completed three settled cost reporting periods.

(2) HHAs participating in the program that have incurred a significant overpayment, as defined in § 405.1202, in any of their last three settled cost reporting periods.

(3) HHAs participating in the program that have Medicare utilization of 85 percent or higher.

(b) *Standard: Evidence of financial security.* HHAs included in paragraph (a) must meet the following conditions:

(1) A newly participating HHA must obtain a bond or establish an escrow account.

(2) Any HHA that has been significantly overpaid must obtain a bond or establish an escrow acount.

(3) A participating HHA that has Medicare utilizaion of 85 percent or higher must—

(i) Obtain a bond or establish an escrow account unless it—

(A) Demonstrates that it did not incur a significant overpayment in any of its last three settled reporting periods; or

(B) If such an overpayment was incurred, documents that the overpayment was repaid within 30 days of the Notice of Amount of Program Reimbursement without borrowing funds for that purpose; and

(ii) Agree to disclose separately any borrowing of funds in order to repay Medicare overpayments in future periods.

(c) *Standard: Amount of bond and retention period.*

(1) An HHA that is applying for participation in Medicare or that has not had three settled cost reporting periods must secure a bond or establish an escrow account in the amount of 10 percent of its projected first year Medicare costs. An HHA's fiscal intermediary will determine the required amount of the bond or escrow account and will inform the State survey agency of that amount.

(2) For participating HHAs other than those subject to the requirements in paragraph (c)(1) of this section that must secure a bond or establish an escrow account, the amount must be equal to the amount of the highest significant overpayment incurred in any of their last three settled cost reporting periods. An HHA's fiscal intermediary will determine the required amount of the bond or escrow account and will inform the State survey agency of that amount.

(3) HHAs specified in paragraphs (b)(1) and (2) of this section must retain the bond or escrow account until they have completed three consecutive settled reporting periods without incurring a significant overpayment. HHAs which have to had three settled cost reporting periods must retain the bond or escrow account for the uncompleted portion of the three year period without incurring a significant overpayment.

(4) HHAs specified in paragraph (b)(3) of this section will continue to be subject to the financial security requirements until their Medicare utilization remains below 85 percent for three consecutive reporting periods. An HHA's fiscal intermediary will inform the State survey agency of the HHA's Medicare utilization percentage.

(d) *Standard: Time limits for repayment of overpayment and obtaining or replacing of a bond or escrow account.*

(1) A participating HHA must obtain a bond or establish an escrow account within ninety days after being notified by its fiscal intermediary that it is required to do so. At the discretion of the fiscal intermediary, a financially distressed HHA may be permitted to have a portion of its interim payments deposited into an escrow account. The allowable time period for such deposits may not exceed six months.

(2) An HHA that is required to secure a bond or establish an escrow account must repay any Medicare overpayment from its funds or from the bond or escrow account within 30 days of receipt of a Notice of Amount of Program Reimbursement from its fiscal intermediary reflecting an overpayment.

(3) If funds are used from a bond or escrow account to repay the overpayment, the HHA must, within ninety days of receipt of Notice of Amount of Program Reimbursement from its fiscal intermediary reflecting an overpayment—(i) renew the bond; (ii) replace the funds in the escrow account; or (iii) negotiate a satisfactory arrangement with the intermediary for depositing a position of interim payments to the HHA's escrow account over a period not to exceed six months.

(4) If the HHA fails to comply with the requirements specified in paragraph (d)(3) of this section within the prescribed time period, HCFA will begin termination proceedings.

(5) If an overpayment occurs that exceeds the amount of the bond or escrow account and it is not repaid within 30 days without borrowing to do so, the fiscal intermediary will notify the State survey agency within 30 days of the additional amount by which the bond or escrow account must be increased.

(e) *Standard: Compliance.*

(1) *General rule.* An HHA will be considered to be in compliance with the financial security requirements for a bond or escrow account as set forth in this section when it has submitted to the Medicare State survey agency written confirmation from an appropriate entity of establishment of an bond or escrow account. However, where an HHA has obtained a guaranty agreement, the required documentation must first be submitted to the fiscal intermediary for review and approval. The intermediary will inform the State survey agency of the acceptability or non-acceptability of the guaranty agreement.

(2) *Bonding.*

(i) *Surety bond (including irrevocable letter of credit).* The confirmation must—

(A) State the amount of the bond or letter of credit;

(B) Specify that payment will be made only to the fiscal intermediary under the bond or letter of credit on receipt of a Medicare Notice of Amount of Program Reimbursement;

(C) Show the period for which the bond or letter of credit will be in effect. This period must extend at least to the first date on which the HHA could comply with the retention requirements in §405.1231(c)(3);

(D) In the case of a surety bond, certify that the bonding agency is in compliance with State licensure requirements, as applicable, holds itself out to the public as being in the business of providing such services, or is an industry organization providing the service as an accommodation to its members; and

(E) Be approved as provided in paragraph (e)(4) of this section.

(ii) *Guaranty agreement.* The agreement must—

(A) Legally bind an individual or organization other than the HHA to be responsible for overpayments incurred by the HHA;

(B) Reflect the guarantor's ability to meet the obligation;

(C) Specify the amount of overpayments to be guaranteed;

(D) Specify that payment will be made only to the fiscal intermediary under the guaranty agreement on receipt of a Medicare Notice of Amount of Program Reimbursement;

(E) Specify the duration of the guaranty. This period must extend at least to the first date on which the HHA could comply with the retention requirements in §405.1231(c)(3); and

(F) Be approved as provided in paragraph (e)(4) of this section.

(3) *Escrow account.* The confirmation must—

(i) State the amount of the account or, if the fiscal intermediary is depositing a portion of interim payments in the escrow account, the total amount that will eventually be deposited in the account;

(ii) State the time period for which the account is to be established. This period must extend at least to be first date on which the HHA could comply with the retention requirements in §405.1231(c)(3);

(iii) State that the holding institution is authorized to release funds during the prescribed time period only to the fiscal intermediary in repayment of Medicare overpayments, or to the HHA upon notification by HCFA that the HHA has terminated its participation in the program and no overpayment exists, or upon completion of the specified time period; and

(iv) Be approved as provided in paragraph (e)(4) of this section.

(4) *Review and approval of arrangements by HCFA.*

(i) Where an HHA is required to obtain a bond, establish an escrow account, or perform other duties to comply with the financial security requirements, it must submit to the Medicare State survey agency or intermediary, as the case may be, any agreement, contract or other documentation as required.

(ii) The HHA must submit sufficient documentation to enable HCFA to determine whether the HHA is in compliance with the financial security requirements.

(iii) The HHA will be deemed to be in compliance with all the requirements until, or unless, HCFA determines, after review of all pertinent documentation, that the program is not adequately protected against loss from overpayments.

(Catalog of Federal Domestic Assistance Program, No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: February 14, 1985.

Carolyn K. Davis,

Administrator, Health Care Financing Administration.

Approved: April 4, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-27810 Filed 11-22-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Probate Proceedings; Filing Time Period for Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This Office is proposing to amend its regulations to change the time period for filing notices of appeal in Indian probate proceedings. This action is being taken to facilitate determinations of finality of non-appealed decisions, and so to expedite distribution of Indian trust estates.

DATE: Comments on the proposed rule must be received by December 26, 1985.

ADDRESS: Comments may be mailed to John H. Kelly, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John H. Kelly, Deputy Director, Office of Hearings and Appeals, (703) 235-3810.

SUPPLEMENTARY INFORMATION: On January 23, 1981, this Office published regulations governing appeals in Indian probate proceedings in 43 CFR 4.320-4.323. These regulations replaced and updated the former appeals regulations found in 43 CFR 4.290-4.297 (1980). Paragraph (a) of 43 CFR 4.320 presently requires appeal in these cases to be filed with 60 days from receipt of the decision being appealed. The former rule had required the notice of appeal to be filed within 60 days from the date of the decision. In order to be able to prove date of receipt, this Office's Administrative Law Judges (Indian Probate) must mail their decisions by certified mail, return-receipt requested. After 4 years experience with this procedure, it has been determined that, by using this form of mail, Indian parties are frequently likely either not to receive decisions affecting them or to receive those decisions after long delays. It is therefore difficult for the Bureau of Indian Affairs to determine whether the time for filing an appeal has passed. Because of this uncertainty, the Bureau often delays distributing Indian trust estates that have not been appealed in order to avoid the problems that could result if an appeal were filed by a party who had received the decision later after distribution. These facts lead to a situation in which distribution of Indian trust estates to the heirs and devisees is often needlessly protracted.

The proposed return to a date based on the date the decision was issued would provide certainty as to when estates could be distributed.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the amendment concerns only a simplification of the determination of the time period for filing an appeal in certain administrative cases, and does not affect any substantive rights.

Paperwork Reduction Act. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under (44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321-4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Dated: October 7, 1985.

Paul T. Baird,

Director.

PART 4—[AMENDED]

43 CFR Part 4, Subpart D, is proposed to be amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat.

586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. Section 4.320 is proposed to be amended by revising the first sentence of (a) to reads as follows:

§ 4.320 Who may appeal; scope of review.

* * * * *

(a) *Notice of Appeal*—Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. * * *

* * * * *

[FR Doc. 85-28062 Filed 11-22-85; 8:45 am]

BILLING CODE 4310-10-M

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This Office proposes to amend its regulations concerning the use of written interrogatories and requests for admission as discovery devices in Indian probate proceedings. Present regulations require that these devices be ordered by the Administrative Law Judge (Indian Probate). The proposed amendment would make the procedures for using these discovery devices more like the procedures for the production of documents and depositions. It would also extend the time for response from 15 days to 30 days from the date of service. This will conform to the Federal Rules of Civil Procedure.

DATE: Comments must be received on or before January 24, 1986.

ADDRESS: Comments may be mailed to John H. Kelly, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John H. Kelly, Deputy Director, Office of Hearings and Appeals, (703) 235-3810.

SUPPLEMENTARY INFORMATION: Current Departmental regulations in 43 CFR 4.222 provide that when parties involved in Indian probate proceedings wish to use written interrogatories and requests for admission as discovery devices, the application or request must be filed with the Administrative Law Judge (Indian Probate). The Judge is then responsible for serving the application or request on the party to whom it is addressed. This procedure causes unnecessary delays and is contrary to the procedures set out in 43 CFR 4.220, regarding production of documents, and 43 CFR 4.221, regarding depositions, in which the Judge becomes involved only when a problem develops between the parties.

The proposed amendment would provide that written interrogatories and requests for admission would be served directly upon the party to whom they are addressed, with a copy to the Judge. The Judge's involvement in discovery would be limited to those situations in which problems develop.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the amendment concerns only the way discovery procedures in certain administrative appeals will be handled, and does not affect any substantive rights.

Paperwork Reduction Act. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321-4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Dated: October 7, 1985.

Paul T. Baird,

Director.

PART 4—[AMENDED]

43 CFR Part 4, Subpart D, is proposed to be amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 373a, 373b, 374.

2. Section 4.222 is proposed to be revised to read as follows:

§ 4.222 Written interrogatories; admission of facts and documents.

At any time prior to a hearing and in sufficient time to permit answers to be filed before the hearing, a party in interest may serve upon any other party in interest written interrogatories and requests for admission of facts and documents. A copy of such interrogatories and requests shall be filed with the administrative law judge. Such interrogatories and requests for admission shall be drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing. Answers shall be served upon the party propounding the written interrogatories or requesting the admission of facts and documents within 30 days from the date of service of such interrogatories or requests, or within such other period of time as may be agreed upon by the parties or prescribed by the administrative law judge. A copy of the answers shall be filed with the administrative law judge. Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

[FR Doc. 85-28063 Filed 11-22-85; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-79; RM-4855]

TV Broadcast Station in Maunaloa, HI

AGENCY: Federal Communications Commission.

ACTION: Dismissal of proposed rulemaking.

SUMMARY: This action dismisses a proposal to assign UHF Television Channel 68 to Maunaloa, Hawaii, in response to a petition filed by Freedom Development Corporation. The rule making is dismissed due to lack of interest by the petitioner or other interested parties.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Maunaloa, Hawaii), MM Docket No. 85–79, RM–4855.

Adopted: November 4, 1985.
Released: November 15, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 50 FR 14949, published April 16, 1985, proposing the assignment of UHF television Channel 68 to Maunaloa, Hawaii, in response to a petition filed by Freedom Development Corporation.

2. The Commission did not receive comments from the petitioner (or any other interested parties), and consistent with our policy and procedures set forth in the Appendix to the *Notice*, we have dismissed the request for lack of continuing interest.

3. In view of the foregoing, it is ordered, that the petition of Freedom Development Corporation, proposing the assignment of UHF television Channel 68 to Maunaloa, Hawaii, is hereby dismissed.

4. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–27776 Filed 11–22–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Notice No. 5–84A]

Acquisition Regulations (GSAR)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which will cancel Acquisition Circular AC–85–1 on payment due dates for construction contracts and consolidate the various Payment Due Date clauses for supply, service, and construction contracts in § 552.232–70 into a single clause with an Alternate. Miscellaneous other revisions to Parts 532 and 552 are proposed to clarify the application of the Interest on Overdue Payments clause to utility contracts, add two new clauses for use in recurring building service contracts to provide for adjusting payments and the submission of a release of claims before making final payment, and to eliminate language in the introductory text prescribing various clauses in Part 552 that repeats the prescriptive language in Part 532. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing December 26, 1985.

ADDRESS: Request for a copy of the proposal and comments should be addressed to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, D.C. 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Mrs. Shirley Scott, Office of GSA Acquisition Policy and Regulations on (202) 523–4765.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1985, the General Services Administration published in the **Federal Register** (50 FR 12587) GSAR Notice No. 5–84 inviting comments from interested parties on a proposed change to the regulation which would have permanently incorporated the contents of Acquisition Circular AC–85–1 on payment due dates for construction contracts into the regulation. In addition, the proposal would have revised the payment due date clause for architect-engineer and other professional or technical service contracts to establish an approval period for purposes of determining due dates for payment. As a result of our review of the comments received from the public and various GSA offices, we have made major changes in our original proposal. Therefore we are requesting comments on the revised proposal. The two new clauses for recurring building services were not included in the original proposal.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed regulation will benefit prospective contractors by clearly spelling out when the Government will make payment for the items or services, how payments will be adjusted for performance deficiencies or failures, and the requirements to be met before final payment will be made. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement contained in this rule will be submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: November 13, 1985.

Richard H. Hopf III,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 85–27972 Filed 11–22–85; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 50, No. 227
Monday, November 25, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Human Nutrition Board of Scientific Counselors Board Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary announces the following meeting:

Name: Human Nutrition Board of Scientific Counselors.

Date: January 9-10, 1986.

Time and Place: January 9, 1986, 9:00 a.m.-5:00 p.m.; January 10, 1986, 8:30 a.m.-3:00 p.m.; Room 104 Administration Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, SW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review as appropriate and advise the Department as to the scope and quality of the human nutrition research and education carried out in the Department of Agriculture. The board also will prepare a report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

Contact Person: Anne Winslow, Confidential Assistant, Office of the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217-W, Administration Building, Washington, D.C. 20250, telephone (202) 447-5035.

Done at Washington, DC., this 6th day of November, 1985.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 85-28094 Filed 11-22-85; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 85-378]

Withdrawal of Intent To Prepare a Trifly Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document withdraws a notice of intent to prepare an environmental impact statement on proposals to eradicate the Mediterranean fruit fly, the Oriental fruit fly, and the melon fly in Hawaii.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 30, 1983, (48 FR 57577-57578) notice was given of the intent of the Department to prepare an environmental impact statement (EIS) on proposals to eradicate in Hawaii the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), the Oriental fruit fly, *Docus dorsalis* (Hendel), and the melon fly, *Dacus cucurbitae* (Coquillet). These flies are referred to collectively as "Trifly". An EIS was being prepared because the Department had been considering undertaking a joint Federal/State program to eradicate the Trifly in Hawaii.

On December 6, 1984, a notice was published in the **Federal Register** (see 49 FR 47643) announcing the availability of a draft Trifly EIS and that written comments on the draft would be received until January 16, 1985. The December 6, 1984, notice also announced that public meetings would be held in Hawaii on December 18-20 to receive comments on the draft EIS. On January 25, 1985, a notice was published (see 50 FR 3580) which reopened the comment period until March 26, 1985. Five hundred and thirty-eight comments were received on the draft EIS.

Most of the comments that were received indicated that the eradication alternatives could have an adverse impact on Hawaii's unique plant and animal ecosystems on land and in water, and also on the human environment. Many comments further indicated that information was deficient in the draft as to how such adverse impacts could be mitigated. It appears that further consideration of these issues is necessary prior to the preparation of a Trifly EIS.

In addition, both the House and Senate Committees on Appropriations in their 1986 appropriation bills for the Department, directed that further research be done concerning techniques of eradication, control and suppression before proceeding with a Trifly eradication program.

Under these circumstances, the Department is withdrawing its December 30, 1983 notice of intent to prepare a Trifly EIS.

Done at Washington, DC, this 19th day of November, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-27998 Filed 11-22-85; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Bridger-Teton National Forest Grazing Advisory Board; Meeting

The Bridger-Teton National Forest Grazing Advisory Board will meet at 1:00 P.M., December 11, 1985, in the Conference Room of the Sublette County Library, Pinedale, Wyoming. The purpose of this meeting is to discuss utilization of range betterment funds and the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend should notify Forest Supervisor Reid Jackson, Box 1888, Jackson, Wyoming 83001, telephone (307) 733-2752. Written statements may be filed with the board before or after the meeting.

The board has established the following rules for public participation:

1. If a group wishes to be heard at the meeting, they are required to select a chairman to voice their ideas.

2. Persons or groups may send written statements to the Forest Supervisor for presentation at the meeting.

3. The Chairman of the Forest Grazing Advisory Board will set aside a time

period on the agenda for public comment.

Ernie Nunn,

Deputy Forest Supervisor.

[FR Doc. 85-28096 Filed 11-22-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Federal Coal Export Commission; Establishment

In the "International Security and Development Cooperation Act of 1985," Pub. L. No. 99-83, the Secretary of Commerce (Secretary) was directed to establish the Federal Coal Export Commission (Commission). In exercise of that authority, the Secretary hereby establishes the Commission pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2 (1982).

The Commission will study domestic and international impediments to U.S. coal exports. It will report to the President and the Congress on its findings concerning the export of U.S. coal, and will recommend means of expanding the U.S. share of the international coal market.

The Commission will have thirty members. Ten of these will be representatives of the U.S. Government, including the Secretary as Chairman and a representative from each of the following: The International Trade Administration, the Departments of Energy, Interior, Labor, State and Transportation, the Office of the United States Trade Representative, the Export-Import Bank, and the President's National Coal Council.

The remaining membership will consist of five representatives from each of the following interests: Export coal producers, including traders and brokers; coal labor; transporters of export coal, including representatives of rail and barge carriers and port authorities; and institutions having a substantial interest in export coal financing.

The Commission will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Interested persons are invited to submit comments regarding the establishment of the Commission. Such comments, as well as inquiries, may be addressed to Robert H. Brumley II, Deputy General Counsel, Office of the General Counsel, Room 5870, U.S. Department of Commerce, Washington, DC. 20230, telephone: (202) 377-4772.

Dated: November 19, 1985.

Signed in Washington, DC, this 19th day of November, 1985.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 85-28018 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Short Supply Review of Cold Heading Quality Steel Wire and Bar Used in the Manufacture of Hand Tools, Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to various sizes of cold heading quality steel wire and bar in coil form.

DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Please send all comments to: Joseph A. Spetrini, Director, Office of Agreements Compliance, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Room 3709, 202/377-1102, Office of Agreements Compliance, Import Administation, 14th and Constitution Ave. NW. Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "... determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category..."

We have received a short supply request for spheroidize annealed, cold heading quality steel wire and bar in coil form meeting AISI standards 10 B21, 10 B22 CRV, 10 B29 CRV, or 10 B30. The material is made to the following specifications:

(a) Dimensions: Diameters ranging from 8.15 mm to 29.77 mm.

(b) Tensile Strength: Max 50 kg/mm2, aim 46 kg/mm2.

(c) Diameter Tolerance: + .000 inch, − 0.0001 inch from nominal. This wire bar is used in the manufacture of various hand tools.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 19, 1985.

[FR Doc. 85-28055 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review of Hot-Dipped Tinplate Used in the Manufacture of Concentrated Juice Cans; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to various sizes of hot-dipped tinplate sheet.

DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Please send all comments to: Joseph A. Spetrini, Director, Office of Agreements Compliance, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Room 3709, 202/377-1102, Office of Agreements Compliance, Import Administration, 14th and Constitution Ave. N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), category . . ."

We have received a short supply request for hot-dipped tinplate, bright finish, conforming to ASTM A-623, meeting the following specifications:

(a) Dimensions: 21 × 34½ inches through 21 × 39 inches.

(b) Temper Types: 3, 4, and 5.

(c) Tin Coating Weight: 1.50 or 2.0 lbs/BB.

(d) Tin Coating Thickness: 107 through 135 lbs/BB (i.e., 0.01177 through 0.01485 inch).

This product is used in the manufacture of concentrated juice cans.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 19, 1985.

[FR Doc. 85-28056 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Wednesday, December 11, 1985, at 10:30 a.m., Room 4830, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963, to advise Department officials of the effect on import markets and retailing of cotton, wool, and man-made fiber textile agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982)) and listed in 5 U.S.C. 552(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377-3737.

Dated: November 20, 1985

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-28021 Filed 11-22-85; 8:45 am]—

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Wednesday, December 11, 1985, at 1:30 p.m., Room 4830, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961, to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR 166 (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377-3737.

Dated: November 20, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-28020 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DR-M

California State University; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 305.5(a)(3) and 301.5(a)(4) of the regulations and be filed within 20 days with the Statutory Import Programs staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-030. Applicant: California State University Dominguez Hills, Department of Biology, 1000 E. Victoria Street, Carson, CA 90747. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of mechanisms of light sensitive membrane assembly and degradation and opsin transport in the visual cell. Application received by Commissioner of Customs: October 28, 1985.

Docket No. 86-031. Applicant: The University of Michigan Hospitals, 1405 East Ann Street, Ann Arbor, MI 48109. Instrument: Extracorporeal Shock Wave Lithotripter. Manufacturer: Dornier Systems GmbH, West Germany. Intended use: The instrument will be used for the treatment of patients, the training of urologists through its graduate medical education programs and continuing educational programs for physicians and for clinical application of the principles of shock wave therapy. Clinical research in shock wave lithotripsy will evaluate the rate of stone formation for which lighotripsy can be utilized, the recurrence of stones in

lithotripter patients, and the impact of reduced hospitalizations on health care costs. These investigations will utilize the data gathered on all patients treated with the lithotripter. Application received by Commissioner of Customs: October 29, 1985.

Docket No. 86–035. Applicant: Mount Sinai School of Medicine of the City of New York, Fifth Avenue and 100 Street, New York NY 10029. Instrument: Electron Microscope, Model EM 10CA/C/CR with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Research on the structures of viruses and their nucleic acid components. Specifically, the instrument will be used to study simian virus 40, human adenovirus type 2 and 5, and influenza viruses. In addition, research will be conducted involving the structures of nucleic acid in general and gene identification in recombinant DNA. Application received by Commissioner of Customs: November 1, 1985.

Docket No. 86–036. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: Excimer Laser-Dye Laser System with Power Supply, Model EMG 203MSC. Manufacturer: Lambda Physik, West Germany. Intended use: Planar laser induced fluorscence studies of high temperature flowing gas systems. Eventually, the instrument will be used to heat the flowing gas system for an investigation of wavelength dependence of gas absorption. The insturment will also be used for student projects in the course ME 357: Introduction to Laser Material Processing. Application received by Commissioner of Customs: November 1, 1985.

Docket No. 86–037. Applicant: The Johns Hopkins University, School of Medicine, Charles & 34th Streets, Baltimore, MD 21218. Instrument: Two Multi-electrode Recording Systems. Manufacturer: Philipps-Universitat Marburg, West Germany. Intended use: The instruments are to be used in experiments on the electrophysiology of the cerebral cortex of monkeys. Application received by Commissioner of Customs: November 1, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–28059 Filed 11–22–85; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No. 86–039. Applicant: Rutgers-The State University, Department of Physics and Astronomy, Serin Physics Laboratory, P.O. Box 849, Piscataway, NJ 08854. Instrument: Dilution Refrigerator System, Model 200TLE with Accessories. Manufacturer: Oxford Instruments, United Kingdom. Intended use: The instrument is intended to be used to extend temperature range downwards by about one and a half orders of magnitude in order to further studies of granular and amorphous metals. There are also studies at the lowest accessible temperature (energies) of the ground state of rare earth compounds in which the 4f shell had either an unstable occupation number or an unstable moment. These studies will embrace superconducting, Kondo-nonmagnetic, mixed valent-nonmagnetic and magnetically ordered ground states along with the occurrence of instabilities between them. Application received by Commissioner of Customs: November 1, 1985.

Docket No. 86–040. Applicant: Good Samaritan Hospital and Medical Center, 1015 N.W. 22nd Avenue, Portland, OR 97210. Instrument: Electron Microscope, Model EM10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument is intended to be used in projects which involve the analyses of cellular damage and possible regeneration. One such project involves the study of cells and cellular organelles in the cornea, lens, retina, and various other regions of the eye. Other projects include the ultrastructural examination of the effects of various antimetabolic agents on hyperplastic cells which invade normal tissue, the examination of possible ultrastructural changes in tissue from chemotherapeutically treated patients who, in the future, plan to donate tissue from other non-treated organs, and the effects of various chemicals and improved surgical techniques on ultrastructural "trauma." Application received by Commissioner of Customs: October 31, 1985.

Docket No. 86–041. Applicant: DHHS/PHS, Food and Drug Administration, 200 C Street, S.W., Washington, DC 20204. Instrument: Light (Irradiation) Source, Model Supuvasun 3000. Manufacturer: Mutzhas Produktions Gesellschaft mbH, West Germany. Intended use: The instrument will be used to study phototoxicity, i.e., toxic responses to light, both in animals and *in vitro*. Animal studies will involve an appropriately chosen animal model (e.g. rats, mice and guinea pigs) an the in vitro studies will involve examining chemical changes in macromolecules and cells after irradiation. Application received by Commissioner of Customs: October 31, 1985.

Docket No. 86–042. Applicant: Texas A&M University, Department of Chemistry, College Station, TX 77843–3255. Instrument: Fourier Transform Interferometric Spectrophotometer, Model IZMO5 with Accessories. Manufacturer: Bomem, Incoporated, Canada. Intended use: The instrument will be used to train graduate students in proper methods and techniques of modern research. Students will use the instrument to obtain spectra in several spectroscopic regions (infrared, ultraviolet, etc.). The spectra will be used as the basis for research projects aimed at developing the skills required for scientific research. Application received by Commissioner of Customs: October 31, 1985.

Docket No. 86–043. Applicant: University of Colorado Health Sciences Center, 4200 E. Ninth Avenue, Denver, CO 80262. Instrument: Counter Current Distribution Apparatus. Manufacturer: Kemicentrum, Lunds Universitet, Sweden. Intended use: The instrument is intended to be used for enterocyte membranes during pulse chase experiments to define biosynthesis of plasma membrane proteins. Application received by Commissioner of Customs: November 1, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–28060 Filed 11–22–85; 8:45 am]

BILLING CODE 3510-DS-M

University of New Mexico et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles: Correction

In FR Docket 85-27214 appearing at page 47243 in the Federal Register of November 15, 1985, the second paragraph is corrected to read:

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-28061 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that offshore platforms jackets and piles from the Replublic of Korea (jackets and piles) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 29, 1986.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that jackets and piles from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by January 29, 1986.

Case History

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. The petitioners subsequently amended the petition to allege, in the alternative, that it was filed on behalf of U.S. producers and workers in the national U.S. market. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on May 9, 1985 (50 FR 20254). On June 3, 1985, the ITC determined that there is a reasonable indication that imports of jackets and piles are materially injuring, or threatening material injury to, a U.S. industry (50 FR 24716). On September 6, 1985, counsel for the petitioners requested the Department to postpone the preliminary determination until not later than November 15, 1985. On September 6, we granted the request (50 FR 37566).

On June 21, 1985, a two-part questionnaire was presented to counsel for potential respondents. On July 18, 1985, Daewoo Shipbuilding and Heavy Machinery Ltd. (Daewoo) and Hyundai Heavy Industries Co. (Hyundai) responded to the first part of the questionnaire which requested initial information concerning sales of the products under investigation.

On August 1, 1985, based upon the initial responses, we informed Hyundai that we were not requesting that they respond to the second part of the questionnaire, the portion which sought detailed sales and cost data. Even though Hyundai had a U.S. sale during the period of investigation, April 1, 1983, through March 31, 1985, its project is not scheduled for completion until August 1986. Until completion, only projected cost data would be available for Hyundai's project.

By contrast, Daewoo had a sale of a jacket and piling during the period of investigation which was completed and exported in mid-1985. Because, whenever possible, the Department uses actual rather than projected data for the calculation of foreign market value, we required only Daewoo to respond to the second portion of the questionnaire. Their response was received on August 12. Also on that date, Hyundai submitted a voluntary response to the second part of the questionnaire. However, we limited our investigation to Daewoo for the reason stated above.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are premanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* (TSUS) under item 652.97.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase price with the foreign market value based on the constructed value of the imported merchandise.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to an unrelaated purchaser prior to its importation into the United States. We calculated the purchase price based on the delivered price to the unrelated customers in the United States. We made deductions for ocean freight and other transportation costs. We made an addition for import

duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value since there were not sufficient home market or third country sales of such or similar merchandise. Constructed value was based on the constructed value response of Daewoo.

In determining constructed value we calculated the cost of materials, fabrication, general expenses from data provided in the response. After a review of the response, we made certain adjustments to the cost data where it appeared that costs necessary for the production of the jackets and piles were not included and for other costs where it appeared that the value may not have been appropriately stated.

We adjusted the cost of manufacturing to include:

- Import duties not paid on raw materials due to exportation of the finished product;
- Interest cost incurred during construction;
- Additional depreciation to appropriately reflect the fully absorbed amount for capital improvements;
- The cost of reconfiguration of the skidway, and
- The cost of repairing damage to manufacturing facilities.

In the general category, we adjusted expenses to:

- Exclude unexplained gains and losses form foreign exchange activities which the company associated directly with the project;
- Exclude interest during construction which was included as part of manufacturing;
- Increase the amount of general interest expense to reconcile with Daewoo's financial statements; and,
- Allocate company-wide expenses based on the value of work performed rather than on other bases which did not appear to appropriately capture the costs for the project, e.g., the cash flow method.

Because the general expenses reported were above the statutory minimum of 10 percent of the sum of material and fabrication costs we used the actual general expenses. As we have been unable to determine what the profit is for the same general class or kind of merchandise, for the purposes of this preliminary determination we are using the statutory minimum of 8 percent.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York. We considered the date of purchase to be the date of acceptance of the contract and used that date as the date for currency conversion.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the act, we are directing the United States Customs Service to suspend liquidation of all entries of jackets and piles form the Republic of Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
Daewoo	25.07
All Others	25.07

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the preliminary countervailing duty determination on jackets and piles from Korea, we found export subsidies (50 Fed. Reg. 29461). If a level of export subsidies is found in the final countervailing duty determination on jackets and piles from Korea, it will be subtracted for deposit or bonding purposes from the dumping margin, if any, found in the final antidumping determination on jackets and piles from Korea.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 7, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 3, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 15, 1985.

[FR Doc. 85-28057 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Offshore Platform Jackets and Piles From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that offshore platform jackets and piles from Japan (jackets and piles) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 29, 1986.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by January 29, 1986.

Case History

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. The petitioners subsequently amended the petition to allege, in the alternative, that it was filed on behalf of U.S. producers and workers in the national U.S. market. In compliance with the filing requirement of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on May 9, 1985 (50 FR 20252). On June 3, 1985, the ITC determined that there is a reasonable indication that imports of jackets and piles are materially injuring, or threatening material injury to, a U.S industry (50 FR 24716). On September 6, 1985, counsel for the petitioners requested the Department to postpone the preliminary determination until not later than November 15, 1985. On September 6, we granted the request (50 FR 37566).

On July 1, 1985, a two-part questionnaire was presented to potential respondents. On July 19, 1985, Hitachi Zosen Corporation (Hitachi) responded to the first part of the questionnaire which requested initial information concerning sales of the products under investigation. On July 22, 1985, Nippon Steel Corporation (NSC) and Nippon Kokan K.K. (NKK) also responded to the initial portion. Based upon the initial responses, we did not require NKK to respond to the second part of the questionnaire, the portion which sought detailed sales and cost data. NKK had two U.S. sales during the period of investigation, April, 1983, through March 31, 1985. However, these projects are not scheduled for completion until mid-1986. Until completion, only projected cost data would be available for NKK's projects. By contrast, both Hitachi and NSC made sales of jackets and piles during the period of investigation that were completed and exported in mid-1985.

Because, whenever possible, the Department uses actual rather than projected data for the calculation of foreign market value, we limited our investigation to the single sale by Hitachi and NSC, respectively. Accordingly, we required Hitachi and NSC to respond to the second portion of our questionnaire. Their responses were received August 15.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* (TSUS) under item 652.97.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase with the foreign market value based on the constructed value of the imported merchandise.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to an unrelated purchaser prior to its importation into the United States. We calculated the purchase price based on the delivered price to the unrelated customer in the United States. We made deductions for ocean freight and other transportation costs.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value since there were not sufficient home market or third country sales of such or similar merchandise. Constructed value was based on the constructed value response of each respondent.

In determining constructed value, we analyzed the responses and calculated the costs of materials, fabrication and general expenses from data provided in the respondents' submissions. We made certain adjustments to the constructed value where it appeared that costs necessary for the production of the products were not included and for other costs where it appeared that the value may not have been appropriately stated. The specific methodology used to calculate constructed value for each company is listed below:

1. *Hitachi's Constructed Value:* We adjusted the manufacturing cost to include:

- certain cost items classified in the submission as general expenses, e.g., quality control and testing.
- the cost of reconfiguring the skidway;

• additional depreciation to reflect appropriately the fully absorbed amount for capital improvements; and,

• interest expense incurred during construction.

We used the statutory minimum of 10 percent of the sum of material and fabrication costs for general expenses because the general expenses reported were less than that amount. As we have been unable to determine what the profit is for the same general class or kind of merchandise, for the purposes of this preliminary determination we are using the statutory minimum of 8 percent.

2. *NSC's Constructed Value:* We compared the reported transfer price for steel used in the project which was produced by the company's own steel mills, to the market prices for comparable steel. We found these related-party transfer prices for steel to be substantially below market prices. Therefore, we adjusted the manufacturing cost by the difference between the company's transfer prices and market prices for the steel products produced by the company.

We used the statutory minimum of 10 percent of material and fabrication costs because the general expenses reported were less than that amount. As we have been unable to determine what the profit is for the same general class or kind of merchandise, for the purposes of this preliminary determination we are using the statutory minimum of 8 percent.

We made currency conversions in accordance with section 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York. We considered the dates of purchase to be the dates of acceptance of the contracts and used those dates as the dates for currency conversion.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of jackets and piles from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
Hitachi	9.71
NSC	56.07
All others	15.56

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 8, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 3, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 15, 1985.

[FR Doc. 85-28058 Filed 11-22-85 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Alloy Band Saw Steel; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to alloy band saw steel.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3087B. (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . ."

We have received a short supply request for alloy band saw steel with a width ranging from ¼ inch to 1¼ inch and a thickness ranging from 0.025 to 0.042 inch. It will be used in the manufacture of band saw blades. This request is independent of the short supply request published in the **Federal Register** on September 9, 1985 concerning carbon band saw steel.

Parties interested in commenting on this request should send written comments as soon as possible, and no

later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request. Commerce will maintain this request and all comments in a public life. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also submit with it a submission without proprietary information which can be placed in the public life. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 19, 1985.

[FR Doc. 85-28017 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Alloy Wire Rod; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to 5.5 mm alloy wire rod used in the production of welding wire and made to American Welding Society specification E70S6.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, Room 3087B, (202) 377-4306.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, Room 3087B, (202) 377-4306.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . ."

We have received a short supply request for 5.5 mm allloy wire rods for use in the production of welding wire, ranging in diameter from 0.0350-inch to 0.0625-inch, to American Welding Society specification E70S6.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 19, 1985.

[FR Doc. 85-28016 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Weather Service; Next Generation Weather Radar Joint System Program Office; Construction and Operation of Next Generation Weather Radar (NEXRAD)

Correction

In FR Doc. 85-25014 beginning on page 42584 in the issue of Monday, October 21, 1985, the third sentence of the **SUMMARY** was incorrect. As corrected, the **SUMMARY** should read:

SUMMARY: The record of Decision published in the **Federal Register** of Tuesday, October 15, 1985, (50 FR 41721) is superseded by this Record of Decision. The National Oceanic and Atmospheric Administration (NOAA) has decided to proceed with its plan to install and operate a new Doppler weather radar system called the Next Generation Weather Radar (NEXRAD) system. NOAA has determined that construction and operation of the NEXRAD system will have *no* significant adverse environmental impacts. All anticipated effects are already minor or can be limited to minor impacts. Careful attention to environmental site selection criteria and site layout will ensure that avoidable impacts are, in fact, avoided and that other impacts are minimized.

BILLING CODE 1505-01-M

Coastal Zone Management; Federal Consistency Appeal by Northwestern Pacific Railroad Company From Objection of the California Coastal Commission to Rail Line Abandonment, Northern California

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal dismissal.

SUMMARY: On February 10, 1984, Northwestern Pacific Railroad Company (NWP) appealed to the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, (CZMA), 16 U.S.C. 1456(c)(3)(A), and implemeting regulations at 15 CFR 930 Subpart H. The appeal was filed from an objection by the California Coastal Commission, which found that the proposed abandonment of the Eel River railway in northern California by NWP was inconsistent with the California Coastal Management Program. The Secretary stayed this appeal in April 1985, pending the preparation of an Environmental Impact Statement by the Interstate Commerce Commission (ICC), the federal agency with jurisdiction over the railway line (49 FR 15507).

On October 3, 1985, NWP requested dismissal of its consistency appeals, on the grounds that NWP had sold the Eel River line and that its application for abandonment had been dismissed by the ICC as moot. Docket No. AB-14 (Sub-No. 4), *Northwestern Pacific R.R.—Abandonment—In Mendocino, Trinity and Humboldt Counties, CA* (order served May 15, 1985). In addition, related Ninth Circuit appeals have been settled. *California v. Northwestern Pacific R.R.*, Nos. 84-1600 and 84-7162 (9th Cir. June 21, 1985). No objection to the dismissal was filed by the California Coastal Commission.

On November 13, 1985, the Secretary of Commerce dismissed NWP's appeal in light of the disposal of the underlying controversy.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney-Advisor, Office of the Assistant General Counsel of Ocean Services, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235 (202) 254-7512.

SUPPLEMENTARY INFORMATION: For a detailed description of NWP's appeal, see the Notice of Appeal published at 49 FR 7268 (February 28, 1984).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance).

Dated: November 19, 1985.

Robert J. McManus,

General Counsel National Oceanic and Atomspheric Administration.

[FR Doc. 85-28023 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Proposed Permit Modification No. 2: Southwest Fisheries Center

Notice is hereby given that the Southwest Fisheries Center (P77#6), National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038 has requested a modification to Permit No. 404 issued on February 8, 1983 (48 FR 6758), as modified on October 26, 1984 (49 FR 43987), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to increase the authorized number of northern elephant seals that can be captured, marked and/or tagged, and release from 120 to 200, and to extend the expiration date of the Permit to December 31, 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Sevice, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 18, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-28033 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification No. 3: NMFS, Southwest Fisheries Center

Notice is hereby given that the Southwest Fisheries Center (P77W), National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification to Permit No. 347 issued on July 25, 1981 (46 FR 38950), as modified on February 7, 1983 (48 FR 6381) and on September 1, 1983 (48 FR 40933) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to increase the take of California sea lions (*Zalophus californianus*) for mark/recapture studies from 3200 to 3900.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 18, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-28034 Filed 11-22-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Fees for Federal Interim Storage; Calendar Year 1986

AGENCY: Department of Energy.

ACTION: Notice of Fees for Federal Interim Storage of Spent Nuclear Fuel from Civilian Nuclear Power Plants in the United States for Calendar Year 1986. The Fees priviously established for Calendar Year 1985 are hereby rescinded on the effective date of this notice.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 U.S.C. sec. 10101 et seq. (Act). The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1986 and replace those in effect for calendar year 1985.

TABLE 1.—FEES FOR FIS SERVICES FURNISHED BY THE DEPARTMENT OF ENERGY, DOLLAR PER KGU [a] [b]

Spent Fuel Committed to FIS (MTU)	Initial fee	Final fee	Total fee
100	350	300	650
300	185	125	310
800	135	75	210
1,500	120	60	180
1,900	115	60	175

[a] The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.
[b] KGU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor. One MTU is 1000 KGU.

EFFECTIVE DATE: The updated fees will be effective on January 1, 1986, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: Dwight E. Shelor, Office of Storage and Transportation Systems (RW-32), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9433.

SUPPLEMENTARY INFORMATION: The updated fees shown above in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services. The Department reexamined alternative methods for structuring fees for FIS services, as reported in 1985 Federal Interim Storage Fee Study: A Technical and Economic Analysis, (PNL-5559) September 1985. Based on this reexamination, the Department again concluded that the

combined interests of the Department and the users would be best served, and costs would be most appropriately recoverd, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Costs of procuring storage modules;

(3) Development costs;

(4) Government administrative costs; including storage fund management;

(5) Impact aid payments made in accordance with section 136(e) of the Act; and

(6) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Intial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract executed, or group of contracts executed simultaneously, by the Department in accordance with section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Fee will be the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Intial Fee will be recalculated by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contractors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the estimated costs for providing FIS Services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the peroperational activities (i.e., design, safety reviews, construction, storage module procurement, and associated activities) and will determine the difference between the Initial Payments made by each user and the subseqeuntly revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following:

(1) Any under- or over-estimation in the costs used to calculate the Initial Payment of the fee, as described above;

(2) The toal estimated cost of operation and decomissioning of the FIS facilties (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including, but not limited to, cask lease, freight charges, and security. Billing and payment for transportation will be on the same schedule as the Final Payment.

In addition to the Intial Payment and the Final Payment described above, the Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or March 31, 2002, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through december 31, 2001. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Intial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department or a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the quarterly Treasury rate plus 6 percent.

In order to factor the time value of money into the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1985:

Assumption 1: Design and construction of FIS facilities would commence in 1986 and be completed so that storage operations could commence in mid-1989;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1989 and mid-1992. It would ship spent fuel to a Monitored Retrievable Storage facility or waste respository during the trhee-year period commencing at the beginning of 1998 and terminating at the end of 2000. One-third of the storage capacity of the FIS facility would be received each year during the receiving period, and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decomissioning of FIS facilities would be conducted in the year 2001.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for storage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel has been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods as for intact fuel assemblies. At that time, any difference in operational costs which may result from receipt and handling of consolidated fuel rods will be factored into the annual recalculation of the fee, and a separate fee for consolidated fuel will be published. If the revised initial fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL-5559.

Issued in Washington, DC, on November 15, 1985.

Ben C Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85-27982 Filed 11-22-85; 8:45 am].

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-13; OFP Case No. 64012-9295-22-24]

Acceptance of Petition for Exemption and Availability of Certification; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration Department of Energy.

SUMMARY: On October 21, 1985, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed Klondike III electric powerplant to be located at its facility in Orange County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, and a steam turbine and generator, an absorption refrigeration package and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a health club, swimming pool and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas and Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR § 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complexes.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR § 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in Sections 701 (c) and (d) of FUA and 10 CFR §§ 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register.**

DATES: Written comments are due on or before January 9, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-13 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in Orange County, California, which will (1) generate electrical power for sale to San Diego Gas and Electric, and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternative fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), KEE has included as part of its petition:

1. Exhibiting containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be rquired, ERA will publish a Notice of Intent to prepare an EIS in the **Fedeal Register** as

soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27973 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-03, OFP Case No. 52164-2951-21, 22, 23, 24-22]

Acceptance of Petition From Oklahoma Gas and Electric Co.; Horseshoe Lake Peaking Facility; Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration Department of Energy.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Horseshoe Lake generating station (Horseshoe Lake) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbinegenerators, Horseshoe Lake generating station units 1GT, 2GT, 3GT, and 4GT, with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at OG&E's Horseshoe Lake facility, a site of approximately 900 acres. It is located on the north bank of the North Canadian River, at a point about one mile north of U.S. Highway 62 and one mile west of Harrah, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before January 9, 1986. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-03 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Horseshoe Lake facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

OG&E stated in its petition that no contract has been made with the manufacturers of the proposed combustion turbines. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature the net peak

operation output is approximately 284.4 MW on natural gas and 278 MW on No. 2 distillate oil. The total peakload fuel consumed using natural gas is estimated to be 3,094.4 million Btu per hour and on No. 2 distillate oil 3,066.8 million Btu per hour. The maximum annual capacity factor for the combustion turbines would be 14.5 percent and the utilization factor could approach 100 percent.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7678) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or delay of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E Horseshoe Lake pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E Horseshoe Lake is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27974 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-04; OFP Case Nos. 52164-2952-21, 22, 23, 24-22]

Acceptance of Petition From Oklahoma Gas and Electric Co.; Muskogee Peaking Facility; Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Muskogee Generating Station (Muskogee), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators, Muskogee generating station units 1GT, 2GT, 3GT, and 4GT, with a maximum total capacity of 250.7 MW. Three of the turbines will have electrical design peak mode putputs of approximately 82.6 MW with the smaller unit having an output of 39.7 MW. Using a site elevation of 600 feet and assuming an 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 2,745.2 million Btu per hour, and on No. 2 distillate oil 2,720.6 million Btu per hour. The proposed units are to be installed at OG&E's Muskogee facility, an 800 acre site adjacent to the Arkansas River, south of U.S. Highway 62. These units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the finl rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding are available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register**.

DATES: Written comments are due on or before January 9, 1986. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-04 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585 Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Muskogee

facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E Muskogee petition.

OG&E submmitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

OG&E stated in its petition that no contract has been made with the manufacturers of the proposed combustion turbines. For planning purposes using a site elevation of 600 feet and assuming a 88° F inlet temperature, the net peak operation output is approximately 250.7 MW on natural gas and 245.7 MW on No. 2 distillate oil. The total design peak mode operation fuel consumption for 4 units would be 3,083.1 million Btu per hour on natural gas and 3,052.7 million Btu per hour using No. 2 distillate oil. The maximum annual capacity factor for the combustion turbines would be 14.5 percent and the utilization factor could approach 100 percent.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or delay of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an environmental Impact Statement or an Enviromental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption wil not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E Muskogee pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on OE&G's petition that the grant or denial of the exemption will significantly affect the quality of the human environment it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27975 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-06; OFP Case No. 52164-2953-22,23,24,25-22]

Acceptance of Petition From Oklahoma Gas and Electric Co.; Mustang Peaking Facility; Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration Department of Energy.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Mustang generating station (Mustang), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simply-cycle combustion turbine generators, Mustang generating station units 2GT, 3GT, 4GT and 5GT, with a maximum total capacity of 284.4MW. Using a site elevation of 1,000 feet and assuming a 88 °Φ inlet temperature, the total; peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at OG&E's facility, a 355 acre site located on the west bank of the North Canadian River at a point about one half mile south of State Highway 4. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before January 9, 1986. A request for

public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-06 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585 Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113 Washington, DC 20585 Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Mustang facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E Mustang petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

OG&E stated in its petition that no contract has been made with the manufacturers of the proposed combustion turbines. For planning purposes using a site elevation of 1,000 feet and assuming a 88° F inlet temperature the net peak operation output is approximately 284.4 MW on natural gas and 278.8 MW on No. 2 distillate oil. The total design peakload condition fuel consumtion for the four units would be 3,524 million Btu per hour on natural gas and 3,489.6 million Btu per hour using No. 2 distillate oil. The maximum annual capacity factor for the combustion turbines would be 14.5 percent and the utilization factor could approach 100 percent.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or delay of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant ot 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27976 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-02; OFP Case No. 52164-2956-22, 23, 24, 25-22]

Acceptance of Petition from Oklahoma Gas and Electric Co.; Seminole Peaking Facility; Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration Department of Energy.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Seminole Generating Station (Seminole), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powe plants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR § 503.41 for four simple-cycle combustion turbinegenerators, Seminole generating station units 2GT, 3GT, 4GT, and 5GT, with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming an 88° F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at OG&E's Seminole facility, a 3,300 acre site adjacent to the South Canadian River, about two miles northeast of Konawa, Oklahoma in the east central region of the state. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Seminole at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in

the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR §§ 501.31and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before January 9, 1986. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-02 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Seminole facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to constuct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

OG&E stated in its petition that no contract has been made with the manufacturers of the proposed combustion turbines. Using a site elevation of 1,000 feet and assuming a 88°F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The net peak mode operations approximately 284.4 MW on natural gas and 278.8 MW on No. 2 distillate oil. The maximum annual capacity factor for the combustion turbines would be 14.5 percent and the utilization factor could approach 100 percent.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or delay of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions the DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the qualify of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27077 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-05; OFP Case No. 52165-6095-21, 22, 23-22]

Acceptance of Petition From Oklahoma Gas and Electric Co.; Sooner Peaking Facility; Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration Department of Energy.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permenently exempting a proposed new peakload powerplant at its existing Sooner Generating Station (Sooner), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981). OG&E requested a permenent peakload exemption under 10 CFR

503.41 for three simple-cycle combustion turbinegenerators, Sooner generating station units 1GT, 2GT, and 3GT, with a maximum total capacity of 176.8 MW. Using a site elevation of 1,000 feet and assuming a 88° F inlet temperature, the total peakload fuel consumed using natural gas is estimated to be 1,935.6 million Btu per hour, and on No. 2 distillate oil 1,917.3 million Btu per hour. The proposed units are to be installed at OG&E's Sooner facility, a site of approximately 10,400 acres. It is located along the east side of U.S. Highway 177, between the two junctions of U.S. Highway 177 and Oklahoma State Highway 15, adjacent to the Arkansas River in North Central Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Sooner at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit writen comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before January 9, 1986. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA–045, 1000 Independence Avenue, SW, Washington, DC 20585.

Socket No. ERA–C&E–86–05 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, DC 20585, Telephone: (202) 252–4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A–113, Washington, DC 20585, Telephone: (202) 252–6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Sooner facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

OG&E stated in its petition that no contract has been made with the manufacturers of the proposed combustion turbines. Using a site elevation of 1,000 feet and assuming a 88° F inlet temperature, the total peakload fuel consumed using natural gas is estimated to be 1,935.6 million Btu per hour, and on No. 2 distillate oil 1,917.3 million Btu per hour. The net peak mode operation is approximately 176.3 MW on natural gas and 172.7 MW on No. 2 distillate oil. The maximum annual capacity factor for the combustion turbines would be 14.5 percent and the utilization factor could approach 100 percent.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or delay of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E Sooner pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27978 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-08; OFP Case Number 67049-9297-21-22-22]

Acceptance of Petition for Exemption by Thermo Power & Electric, Inc.; Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

SUMMARY: On October 16, 1985, Thermo Power & Electric, Inc. (Thermo) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent site limitation exemption for a proposed cogeneration powerplant facility to be located in Greeley, Colorado, from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new powerplants. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The site limitation exemption criteria is contained in 10 CFR 503.33 of the final rules.

Thermo requests a permanent site limitation exemption in order to burn natural gas and/or distilled fuel oil in two Stewart & Stevenson combustion turbines to be operated at University of Northern Colorado ("UNC") located in the town of Greeley, Colorado. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in Section 701(c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing the petition as well as other documents and supporting materials on this proceeding is available at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, 9:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays. ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments or a request for public hearing on the acceptance of Thermo's petition for exemption are due on or before January 9, 1986.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Coal & Electricity Division, Case Control Unit, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number ERA-C&E-86-08 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Office of Fuels Programs, Coal & Electricity Division, Eoonomic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Phone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Phone (202) 252-6947

SUPPLEMENTARY INFORMATION: The facility will be located on the campus of UNC adjacent to UNC's heating plant. The heating plant is located in the northeast corner of UNC which, in turn is located in the southeast corner of the town of Greeley, Colorado.

Thermo has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new turbines has been furnished.

The proposed facility will be constructed immediately adjacent to the present UNC heating plant. The proposed plant will consist of two natural gas fired combustion Stewart & Stevenson turbines, rated for 26 MW each, which will be exhausted into two waste heat recovery steam generator units rated for approximately 67,300 lbs. per hour of 600 psi/700° F steam at a 60° ambient condition. The UNC high pressure hot water loop will pass through this same waste heat recovery boiler and will extract the maximum number of low temperature BTU's which otherwise would have been exhausted to the atmosphere. The high pressure hot water produced from this exhaust will be used throughout the UNC campus for central heating and cooling, for domestic hot water and flashed for kitchens, laboratories and numerous other steam and hot water purposes.

All electricity will be sold to Public Service Company. During the hours of operation, the facility will be fully loaded resulting in an average capacity of 63.3 MW. Total hourly KWH expressed as BTU's is equal to 216.03 MMBTU/hr. This represents an electrical efficiency of 47.12%.

In order to provide the heating services to the University, the cogeneration plant must be located in close proximity to the University. The surrounding area is already fully developed and utilized by the University or is privately owned and occupied. There are no other alternate sites. The physical limitations of this site, addressed by the petitioner are, its location in an already developed urban area and the principal limitation of the site is its size. There is a total of approximately 150,000 square feet of usable land near the required point of interconnection with the UNC system.

Thermo certified that:

1. The site limitation criteria contained in 10 CFR 503.11(a)(4) and 503.33(a) are satisfied by the facility for which exemption is sought and the plant where it will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the facility for which the exemption is sought and the plant at which it will be installed.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts Thermo's petition for a permanent site limitation exemption for the proposed boilers. The acceptance of the petition by ERA does not constitute a determination that Thermo is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 15, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27879 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-27-NG]

Natural Gas Imports; Michigan Consolidated Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 1, 1985, of an application from Michigan Consolidated Gas Company (MichCon) to import on an interruptible basis up to 13,000 Mcf per day of Canadian natural gas pursuant to exchange agreements with Esso Chemical Canada (ECC), a Division of Imperial Oil Limited (Imperial), and Shell Western E&P Inc. (Shell) for a period of three years from the date of initial delivery. The agreement would be automatically renewable thereafter. The gas to be purchased by Imperial from TransCanada PipeLines Limited (TransCanada), will be transported from the point of importation at the U.S.-Canadian boundary near Emerson, Manitoba, to Belle River Mills, Michigan, by TransCanada through Great Lakes Transmission Company (Great Lakes) facilities. At Belle River Mills, the gas will be delivered to MichCon for use in its distribution system.

The proposed import of natural gas by MichCon represents part of a proposed energy exchange, on an equivalent Btu basis, of natural gas for ethane gas that is currently being sold by Shell to MichCon. This exchange will enable Shell to restart existing extraction facilities at Kalkaska, Michigan, to remove ethane from natural gas sold to MichCon. The ethane will be transported through Shell's existing natural gas liquids pipeline to Marysville, Michigan. There it will be exported by Dome Petroleum Corp. (Dome) for use as a petrochemical feedstock at a Sarnia, Ontario, facility operated by Imperial's ECC Division. MichCon has requested expedited treatment of its application to enable it to overcome operational problems, which the ERA has granted.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on December 10, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-098, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9622

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION:

Imperial's ECC Division operates a petrochemical complex at Sarnia, Ontario, that produces ethylene which is used in the manufacture of polyethylene, polyvinyl choride and other petrochemical derivatives. Historically, a primary feedstock for the Sarnia operation has been ethane that was available in the past from Shell's operations in Kalkaska, Michigan. In April 1985 Shell notified MichCon that it no longer could market this ethane and that it would leave the ethane in the gas that is supplied to MichCon.

A higher level of ethane in the gas resulted in a significantly higher Btu content in the gas received from Shell when compared to MichCon's other sources of supply. This caused MichCon operational problems in trying to provide a relatively stable Btu quality gas to its customers, especially those that required a stable Btu content for their industrial processes. In addition, at times, a higher concentration of mercaptan sulfur remains with the ethane in the gas. The increased level of mercaptans causes an increase in the level of leak complaints during fringe heating season months. In view of these operational problems, particularly at this time of the year, MichCon has requested expedited treatment of its application.

To correct the operational problems, MichCon entered into agreements with ECC and Shell which will allow Shell to market the ethane. The ethane extracted by Shell at Kalkaska, Michigan, will be delivered to ECC which will then return an equivalent amount of energy in the form of natural gas to MichCon. Great Lakes will deliver the natural gas to MichCon at its existing delivery point at Belle River Mills.

The proposed import of natural gas will make use of existing facilities and, therefore, will have no adverse environmental impact. The energy exchange agreement between MichCon and ECC and the gas supply agreement between MichCon and Shell are on an interruptible basis to utilize spare pipeline capacity. Although the term of each agreement is three years, and automatically renewable (evergreen) thereafter, the agreement may be suspended on 30 days notice by either party.

In support of its application, MichCon states that the proposed import of natural gas is not inconsistent with the public interest, as the resulting substitution of natural gas for ethane will allow MichCon to overcome operational problems and provide a more uniform quality of gas to its customers. This will also allow Shell to return its extraction facility and natural gas liquids pipeline to previous operating levels.

On November 12, 1985, MichCon filed a letter which more fully explained the operational problems and need for expedited treatment, and claimed that expeditious treatment of its application is strongly in the public interest. Based on this letter, MichCon made an acceptable demonstration of the need for expedited treatment. The ERA has determined that the public interest will be served by reducing the public comment period to 15 days.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines and whether an energy exchange, on an equivalent Btu basis, would be in the public interest.

Other Information

In response to this notice, any person may file a protest, motion to intervene

or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., December 10, 1985.

A decision will be made on the basis of the information now in the record supplemented by comments filed in response to this notice. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, conference or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 15, 1985.

Robert L. Davies,

Acting Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85-27980 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With IU International Oil & Gas, Inc. and Texfel Petroleum Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE), and IU International Oil & Gas, Inc. (IU) and Texfel Petroleum Corporation (Texfel), shall be made a final order of the DOE. The Consent Order resolves issues of compliance by IU and Texfel with the federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period November 16, 1973, through December 31, 1975, from the McKittrick-McNeal Lease in McKittrick Field, Kern County, California (the "McKittrick lease"). IU and Texfel will pay to DOE the sum of $975,000 within 10 days of notification from DOE that the Consent Order has been adopted as a final order by the agency, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the IU/Texfel Consent Order final was made after a review of all written comments received.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special Counsel (RG-13), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-4945.

SUPPLEMENTARY INFORMATION:

I. Introduction

ERA previously issued a notice announcing a proposed consent order between DOE, and IU and Texfel, which would resolve matters relating to compliance by the two firms with the federal petroleum price and allocation regulations pertinent to the production and sale of crude oil from the McKittrick lease for the period November 16, 1973, through December 31, 1975. (50 FR 40440, October 3, 1985). The proposed consent order requires IU and Texfel to pay $975,000 within ten days of the effective date of the Consent Order.

The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received two comments, which addressed the question of the ultimate disposition of the funds to be paid by IU and Texfel pursuant to the settlement, but which did not question the basis of the settlement or the adequacy of the settlement amount. The comments were submitted by the following:

Governo's Energy Office, State of Florida

Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia

The two comments, although formulated differently, and differing in the nature and amount of supporting analysis, are both devoted exclusively to establishing the proposition that monies received under the IU/Texfel Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by IU and Texfel related to the miscertification of crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and the refiners could then pass the overcharges on to others. *See United States v. Exxon Corp.*, F.2d—, Slip op. at 110-112 (TECA, July 1, 1985) [Nos. 91 *et seq.*].

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: the Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertification, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

> Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through

and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, . . . is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27400 [July 2, 1985].

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methology, DOE concluded:

It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comments on the IU/Texfel Consent Order appear to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by the firms' alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from IU and Texfel pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury. The Policy Statement explains that this is preferable to further *ad hoc* payments to the states because:

[T]he states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon* and *Sutton*, courts) for these programs at this time. *supra*, at 27402.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between IU and Texfel, and DOE, shall become a final order of the DOE. Today DOE has issued notice to Texfel and IU of the agency's decision to make the Consent Order final, and the Consent Order shall become final upon delivery of that notice.

Issued in Washington, DC, on November 18, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-27981 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and time: Saturday, December 14, 1985, 8:30 am-4:30 pm.

Place: National Science Foundation, Room 540, 1800 G. Street, NW., Washington, DC 20550.

Contact: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, DC 20545, Telephone: 301/353-4829.

Purpose of panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Saturday, December 14, 1985

—Discussion of Status of FY 1986 National Science Foundation Elementary Particle Physics Budget and the FY 1986 Department of Energy High Energy Physics Budget
—Initial Discussion of the Report of the Subpanel on Non-Accelerator Particle Physics
—Discussion of the Report of the Subpanel on Advanced Accelerator R&D and the SSC
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable a provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 19, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-27983 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP86-101-000]

Elizabethtown Gas Co., Applicant, Transcontinental Gas Pipe Line Corp., Respondent; Application

November 20, 1985.

Take notice that on October 31, 1985, Elizabethtown Gas Company (Applicant), One Elizabethtown Plaza, Elizabeth, New Jersey 07207, filed in Docket No. CP86-101-000 an application pursuant to section 7(a) of the Natural Gas Act for an order directing transcontinental Gas Pipe Line corporation (Transco) to provide natural gas service to Applicant on a long-term basis through an existing delivery point on its system in the Spruce Run area, Union Township, Hunterdon County, New Jersey, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

With approval from the New Jersey Board of Public Utilities, Applicant states that it is providing interruptible gas service to Jersey Central Power and Light Company (JCP&L), a New Jersey electric utility, for its combustion turbine facility at Glen Garden generating station, Lebanon Township, New Jersey. Applicant states that the gas for JCP&L is delivered to Applicant through an interconnection which Transco installed under section 311(a) of the Natural Gas Policy Act and Part 284 of the Commission's Regulations and that Applicant would reimburse Transco its costs for such installation.

Applicant further states that it is currently enfranchised to serve a number of communities in the vicinity of the Spruce Run delivery point and may become enfranchised to serve others and that the site is strategically located

within a rapidly developing area of New Jersey.

Applicant explains that it is not seeking an additional supply of natural gas from Transco in this application. Since Transco is applicant's principal supplier of gas, rendering long-term service under various Rate Schedules including CD-3, PS-3, S-2 and GSS, Applicant states that it desires the Spruce Run delivery point to be added as a delivery point under all service agreements with Transco for service under such rate schedules. It is asserted that no additional construction or investment, either by Transco or by Applicant, would be required to effect the proposed authorization.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 4, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 156.9). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Transco's answer to the application shall be filed on or before December 19, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28080 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-192-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

November 20, 1985.

Take notice that on November 5, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-192-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to (1) sell and deliver natural gas to Utilicorp United Inc. (Utilicorp); (2) utilize certain existing delivery points to facilitate such sale; and (3) sell natural gas in accordance with a new rate schedule, Argus Rate Schedule, to be incorporated in Northern's FERC Gas Tariff, Third Revised Volume No. 1. Northern's proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that on September 13, 1985, InterNorth, Inc., doing business as HNG/InterNorth, sold its interest in its Peoples Natural Gas Company (Peoples) to Utilicorp, to be effective on January 1, 1986. Northern requests authority to sell natural gas to Utilicorp under all of the terms and conditions under which Northern currently sells natural gas to Peoples and at the same level of firm entitlement currently sold to Peoples. As a result, Northern proposes to sell to Utilicorp 419,923 Mcf per day of contract demand service; 46,631 Mcf per day of seasonal service demand; and 19,445 Mcf per day of winter period service. It is explained that Utilicorp would be charged the currently effective rates under the above effective rate schedules upon commencement of the proposed sale. Northern also requests authorization to utilize existing delivery points to deliver gas to Utilicorp.

Northern seeks authorization to establish an Argus Rate Schedule to be available for sales to the Argus Communities and Argus Drillers, Pumpers, and Irrigation Sales as listed in the Directory of Communities included in Northern's FERC Gas Tariff, Third Revised Volume No. 1. Northern states that these Argus Communities traditionally have been served under separate Argus rates as part of Northern's non-jurisdictional sales to Peoples. Northern states that it is required to establish this rate schedule in order to continue sales to the Argus Communities through Utilicorp. Northern proposed to sell to Utilicorp 29,090 Mcf per day of firm entitlements under the Argus Rate Schedule.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 5, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28081 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-101]

Snohomish River Basin, WA; EIS Scoping Meetings and Technical Sessions for Cluster Impact Assessment Procedure

November 19, 1985.

As referenced in the October 15, 1985, Notice of Intent to Prepare an Environmental Impact Statement and Conduct a Scoping Meeting, and the subsequent Errata Notice issued on November 6, 1985, the subject Technical Sessions will be convened at 9:30 a.m. in the House Rules Room (1st floor) of the Legislative Building in Olympia, Washington, December 3-5, 1985.

The scoping meetings for the environmental impact statement (EIS) to be prepared will be held at 1:30 p.m. in the House Rules Room (1st floor) of the Legislative Building in Olympia on December 5, 1985, and at 7:00 p.m. in the Ginny Stevens Auditorium at the Snohomish County Administration Building in Everett on December 6, 1985.

Any written comments and recommendations on EIS scoping should be filed with the Commission on or before December 20, 1985, and must be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should clearly show the following caption on

the first page: Snohomish River Basin, Washington, Docket No. EL85-19-101.

For further information, please contact the FERC Project Manager, Frank Karwoski, at (202) 376-1761 or Staff Counsel, David Boergers, at (202) 357-5773.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28066 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-2-000]

Southern Union Co.; Petition for Declaratory Order

November 19, 1985.

Take notice that on October 16, 1985, Southern Union Company filed a petition for a declaratory order under sections 103 and 104 of the Natural Gas Policy Act (NGPA) and Rule 207 of the Commission's rules of practice and procedure. Southern Union seeks a declaration by the Commission that damages awarded to Consolidated Oil & Gas, Inc. (Consolidated) by the District Court of Santa Fe County, New Mexico in *Consolidated Oil & Gas, Inc. v. Southern Union Co., appeal docketed* No. 79-2161(c) (N.M. Sup. Ct., August 9, 1985) cannot be lawfully collected because the damages represent an increase above the NGPA ceiling prices applicable to gas sold under the disputed contracts. Southern Union also seeks a declaration by the Commission that Consolidated refund to Southern Union that portion of the lump sum payment under the Settlement Agreement which is attributable to rates in excess of the applicable ceiling prices for gas sold under the disputed contracts.

Southern Union's petition arises from a lawsuit for damages filed by Consolidated in the First Judicial District, Santa Fe County, New Mexico. Consolidated claimed damages resulting from the alleged breach of an agreement related to previous litigation between Southern Union and Consolidated. On July 12, 1985, the New Mexico District Court awarded damages of $11,023,967 against Southern Union (representing $8,427,978 in damages and $2,595,989 in prejudgment interest) basing its damage award on a theory of negligent misrepresentation. The method used by the court to calculate the amount of damages was based on the benefit of the bargain or an amount equal to the difference between the interstate prices paid for Consolidated's gas by Southern Union and the intrastate prices which should have been paid by Southern Union.

Southern Union argues that this damage award allows Consolidated to collect amounts in excess of NGPA ceiling prices for gas sold in interstate commerce. Southern Union states that any effort by Consolidated to collect these damages which are higher than the authorized ceiling price violates both Consolidated's small producer certificate and the federal price ceilings in the NGPA. Southern Union states that the trial court's award of damage invades the Commission's exclusive jurisdiction to establish the lawful rates charged by Consolidated for natural gas sold in interstate commerce.

Southern Union states that it has already paid to Consolidated, as part of a lump sum payment, an amount representing the difference between the NGPA ceiling prices originally paid and intrastate rates attributed to the four contracts in question. Southern Union requests that if the Commission determines that Consolidated may not lawfully collect rates in excess of applicable NGPA interstate ceiling prices, the Commission also declare that the portion of the settlement payment which represents an improper rate increase be refunded to Southern Union.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rules 214 or 211 of the Commission's rules of practice and procedure. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

November 19, 1985.

[FR Doc. 85-28082 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-1-000]

American Crude, Inc.; Petition for Adjustment

Issued: November 20, 1985.

On October 11, 1985, American Crude, Inc. (American Crude) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978.[1] American Crude seeks waiver of its obligations under Commission Order Nos. 339, 399-A, and 399-B [2] requiring payment of Btu adjustment refunds by first sellers of natural gas.

American Crude states that it has filed a petition in bankruptcy in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Cause No. 84-01819-H-1-5. It further states that it has received requests from United Gas Pipe Line Company and Allied Union Texas Petroleum for Btu refunds in the amounts of $9,247.65 and $1,267.23 respectively, including interest. It has advised these companies that payment or settlement of these claims is governed by the Bankruptcy Court and that they should file proof of claim with such Court.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure (18 CFR 385.1101 *et seq.* (1985)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28064, Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-2-000]

Southland Royalty Co.; Petition for Adjustment

Issued: November 20, 1985.

On October 15, 1985, Southland Royalty Company (Southland) filed with the Commission, under section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3412(c) (1982), a petition for permission to recover from Panhandle Eastern Pipeline Company (Panhandle) and Tennessee Gas Pipeline Company (Tennessee) the Btu refunds attributable to certain royalty interest owners. Southland states it paid the refunds on all royalty interest owners' behalf to Panhandle and Tennessee pursuant to Commission Order Nos. 399, 399-A and 399-B, but has been unable to collect refund amounts from eight such owners.

[1] 15 U.S.C. 3412(c) (1982).

[2] 28 FERC ¶ 61,379 (1984), 29 FERC ¶ 61,254 (1984), and 32 FERC ¶ 61,072 (1985), respectively.

Southland's Btu refund obligations to Panhandle and Tennessee are attributable to the production and sale of gas from three wells of which Southland is the operator: Mallory 1–6, Mallory 2–6 and Hay Stephens Unit 2. The first two wells are located in Woods County, Oklahoma. Hay Stephens Unit 2 is in Colorado County, Texas.

Southland asserts that the eight royalty interest owners' Btu refund obligations are uncollectable. According to Southland, all three wells have been plugged and abandoned and Southland has no present or future obligation to make royalty payments to any royalty interest owner at issue, thus precluding Southland's recovering the refund obligations through billing adjustments. Moreover, the eight royalty interest owners have either died or failed to acknowledge Southland's correspondence regarding the Btu refund obligation.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commision's Rules of Practice and Procedure [18 CFR 385. 1101 *et seq.* (1985)]. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary

[FR Doc. 85–28065 Filed 11–22–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–109–000]

The Connecticut Light and Power Co.; Filing

November 19, 1985

Take notice that on November 1, 1985, The Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an agreement (the agreement) between CL&P, Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and Cambridge Electric Light Company (Cambridge). The Agreement, dated as of June 1, 1985, provides for the NU Companies to sell to Cambridge power from the systems of the NU Companies (system power) that may be available on a daily or weekly basis (a transaction). CL&P states that the timing of transactions cannot be accurately estimated but that the NU Companies would offer to sell such system power to Cambridge only when it was economic to do so. Cambridge would only accept such offer if it was economical to do so.

Cambridge will pay a capacity charge to the NU Companies for each transaction in an amount equal to the megawatts of system capacity reserved for Cambridge by the NU Companies during each hour of a transaction multiplied by the capacity charge rate which is negotiated prior to each transaction. Cambridge will pay an energy charge to the NU Companies for each transaction in an amount equal to the megawatthours delivered by the NU Companies during such transaction multiplied by the energy charge rate. The energy rate is based on the heat rate and the replacement fuel price of the generating unit(s) which the NU Companies determine to be available to provide energy at the time of a transaction.

CL&P requests that the Commission waive its customary notice period and allow the Agreement to become effective on October 25, 1985, the date of the filing letter.

WMECO has filed a Certificate of Concurrence in this docket.

The Agreement has been executed by CL&P, WMECO, and by Cambridge (Wareham, Massachusetts) and copies have been mailed or delivered to each of them.

CL&P further states that the filing is in accordance with section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28072 Filed 11–22–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–167–000]

Delmarva Power and Light Co.; Filing

November 19, 1985.

Take notice that on November 13, 1985 Delmarva Power and Light Company (Delmarva) tendered for filing an original and six copies of Fifth Revised Leaf No. 38 to Delmarva's FERC Electric Transmission Service Rate Schedules 56, 58, 59, 60, 64 and 65.

The revised tariff leaf incorporates changes to modify the "monthly contracted demands" for the six resale Customers of Delmarva who are taking service under these Transmission Service Rate Schedules. These changes have been requested by the Customers and are permissible under Article 2 of the respective transmission service agreements having been approved as part of a settlement approved by the Commission by letter Order dated May 31, 1983 in Docket No. ER82–751–003.

The proposed effective date for the revised leaf is December 31, 1985. Since the proposed effective date is based upon the transmission service agreements approved by and on file with the Commission, it is requested that waiver of the notice period be granted and that the revised leaf be permitted to become effective on January 1, 1986, after a one day suspension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure [18 CFR 385.211, 385.214]. All such motions or protests should be filed on or before November 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28073 Filed 11–22–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–136–000]

Duquesne Light Co.; Filing

November 19, 1985.

Take notice that Duquesne Light Company ("Duquesne") on November 1, 1985 tendered for filing a Transmission Agreement Between Duquesne Light Company and AES Beaver Valley, Incorporated ("AES–BV") ("the Agreement"). The Agreement is dated and effective August 28, 1985 and is to

continue until December 31, 2016, unless terminated earlier either by mutual agreeemnt of by reason of the occurrence of certain events set forth in the Agreement.

With Duquesne's consent, AES–BV has assigned the contract to BV Partners ("BV"), a partnership of which AES–BV is the managing general partner. BV will operate a coal fired cogeneration facility located adjacent to the ARCO Chemical Company plant in Potter Township, Beaver County, Pennsylvania. West Penn Power Company ("West Penn") will purchase the capacity and energy made available by the BV facility. The Transmission Agreement provides for the transmission by Duquesne over its system and delivery to West Penn of power and energy generated by BV and received by Duquesne through a 138kV interconnection with BV.

The Agreement provides for transmission service for up to 135 Megawatts at a charge by Duquesne as set forth in Service Schedule A to the Transmission Agreement. With the exception of certain adjustments, Service Schedule A provides for a transmission service demand charge of $24,000 per week for 100 megawatts plus a weekly demand charge of $0.24 per kilowatt multiplied by the maximum number of kilowatts reserved in excess of 100 megawatts, up to 25,000 kilowatts. An energy charge of one mill per kilowatt-hour is imposed on the aggregate number of kilowatt-hours delivered to West Penn during a billing month.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28074 Filed 11–22–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86–114–000]

Northern States Power Co.; Filing

November 20, 1985.

Take notice that Northern States Power Company (Minnesota) on November 1, 1985, tendered for filing Supplement No. 1 to the Municipal Transmission Service Agreement between Northern States Power Company and the City of Blue Earth (Supplement).

The Supplement reduces the obligation of the customer to compensate NSP for transmission line losses. The Supplement provides that NSP shall only be furnished power and energy equal to 4.5 percent of the deliveries instead of the 7 percent provided for in the existing agreement. The Municipal Transmission Service Agreement is on file with the Commission and is designated as Rate Schedule FERC No. 438.

NSP requests a waiver of the 60 Day Notice Requirement and an effective date of November 20, 1985, for these Supplements. This date provides a convenient point in the meter reading cycle to make this adjustment and would reduce the customers' bills at the earliest possible date. NSP also requests any other filing requirements under Section 35.13 or any other applicable section be waived by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or before November 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28075 Filed 11–22–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86–115–000]

Northern States Power Co.; Filing

November 20, 1985.

Take notice that Northern States Power Company (Minnesota) on November 1, 1985, tendered for filing the Supplement No. 2 to the Municipal Resale Transmission and Transformation Service Agreement between Northern States Power Company and the City of Sauk Centre.

The Supplement No. 2 to the Municipal Resale Transmission and Transformation Service Agreement (Supplement) provides for a second point of delivery and terminates the contract on October 20, 1987. During the period October 1, 1985, to October 20, 1987, the City shall have the option of taking any or all of the deliveries of the power and energy provided for under the contract from either of the two points of connection. The Supplement provides that on October 20, 1987, the City will no longer purchase firm power and energy from NSP under NSP's Wholesale Load pattern Power Service Rate Schedule.

The Municipal Resale Transmission and Transformation Service Agreement is on file with the Commission and is designated as Rate Schedule FERC No. 389.

Northern States Power Company requests this Supplement become effective on October 1, 1985, and therefore, requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28076 Filed 11–22–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 86–56–000]

Public Service Co. of New Hampshire; Amendment to Filing

November 19, 1985.

Take notice that on November 12, 1985, Public Service Company of New Hampshire ("PSNH") filed an amendment to its initial rate filing of October 25, 1985 of a System Exchange

Agreement between PSNH and Green Mountain Power Corporation.

The amendment revises an attachment showing revenues from previous exchanges by providing the number of megawatthours transferred in each exchange. It also clarifies that the energy reservation charge ceiling rate of $.00615 per kilowatthour applied to exchanges on or prior to the filing date of October 25, 1985 and that the energy reservation charge ceiling rate of $.0189 per kilowatthour applies to exchanges commencing after October 25, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Nov. 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28070 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-23-000]

Union Electric Co.; Amended Filing

November 19, 1985.

Take notice that on October 15, 1985 Union Electric Company (UE) tendered for filing an Interchange Agreement dated August 29, 1985, between UE and Iowa Southern Utilities Company. As requested by the Commission, UE on November 12, 1985, amended the filing by submitting revised pages for service schedules which contain rates for energy supplied from third-party systems.

The Interchange Agreement, supersedes in its entirety an existing agreement and among other things, established the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefor.

UE requests that the filing be permitted to become effective December 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28071, Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-38-000]

Samson Resources Co.; Application of Samson Resources Co. for Certificates of Public Convenience and Necessity to Render Service Previously Authorized by the Commission in Certificates of Public Convenience and Necessity Issued to Sun Exploration and Production Co.

November 19, 1985.

Take notice that on October 28, 1985, Samson Resources Company (Applicant), of Samson Plaza, Two West Second Street, Tulsa, Oklahoma 74103, filed an application pursuant to section 7(c) of the Nautral Gas Act and § 157.23, *et seq.*, of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act as an Independent Producer, as defined in § 154.91(a) of said Regulations, for certificates of public convenience and necessity authorizing Applicant to continue to render service previously authorized by the Commission under certificates of public convenience and necessity heretofore issued to Sun Exploration and Production Company, in the Docket Nos. listed in Exhibit "A". Concurrently herewith Applicant is filing a Certificate of Adoption and Request for Redesignation of Rate Schedules of Sun Exploration and Production Company now in effect and on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 3, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Exhibit A

Respondent Name and Code: Samson Resources Co. 016599

Docket No.	Rate schedule No.	Buyer name	Applicable just and reasonable rate previously established under NGA	Applicable NGPA rate	Effective date of rate establishment
1. CI75-324	[1]571	Arkla	.298	.298	7-1-84
2. CI66-470	[1]435		.302	.302	10-1-84
3. CI64-32	[1]410		.907	.907	12-1-84
4. CI66-470	[1]455		.310	.310	7-1-85

Note.—"Arkla" is Arkansas Louisiana Gas Company.
[1] Designated Rate Schedule Number of Sun Exploration and Production Company, predecessor in interest to Samson Resources Company.

Location of sale in order of above:

1. Arkoma Area, Latimer County, Oklahoma
2. Arkoma Area, Leflore County, Oklahoma
3. Anthon Area, Custer County, Oklahoma
4. Arkoma Area, Leflore County, Oklahoma

Date of Contracts in order as above:

1. March 30, 1984
2. November 4, 1965
3. July 5, 1962
4. November 4, 1985

Base price in dollars per MMBTU (exclusive of any statutory adjustments and tax reimbursements) in order as above:

1. .298 July 1984 minimum rate gas
2. .301 October 1984 minimum rate gas
3. .907 December 1984 Section 106(a) Interstate Rollover Gas
4. .310 July 1985 minimum rate gas

Statutory adjustments including tax reimbursements to be added to base price in items above:

1. Tax reimbursement—$.024 per MMBTU
2. None
3. None
4. None

Estimated sales for first month of deliveries in order as above:

1. 16,000 MCF
2. 1,200 MCF
3. 6,300 MCF
4. 4,200 MCF.

[FR Doc. 85-28085 Filed 11-22-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST85-1661-000 et al.]

Transcontinental Gas Pipe Line Corp. et al.

November 19, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to Section 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b) (2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before December 6, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-1661	Transcontinental Gas Pipe Line Corp.	National Fuel Gas Supply Corp.	09-03-85	G		
ST85-1662	National Fuel Gas Supply Corp.	Buffalo Crushed Stone, Inc.	09-03-85	F(157)		
ST85-1663	Natural Gas Pipeline Co. of America	Pacific Lighting Gas Supply Co.	09-03-85	B		
ST85-1664	Arkla Energy Resources (Intrastate)	Columbia Nitro. Corp. & Nipro, Inc.	09-03-85	C/F (157)		
ST85-1665	Arkla Energy Resources	Columbia Nitro. Corp. & Nipro, Inc.	09-03-85	F(157)		
ST85-1666	Arkla Energy Resources	Columbia Nitro. Corp. & Nipro, Inc.	09-03-85	F(157)		
ST85-1667	United Texas Transmission Co.	Dow Pipeline Co.	09-03-85	C		
ST85-1668	Lawrenceburg Gas Transmission Corp.	Diamond-Bathurst Inc.	09-03-85	F(157)		
ST85-1669	Dow Pipeline Co.	El Paso Natural Gas Co.	09-03-85	C		
ST85-1670	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	09-03-85	B		
ST85-1671	Northwest Central Pipeline Corp.	Peoples Gas Light and Coke Co.	09-04-85	B		
ST85-1672	Northwest Central Pipeline Corp.	Illinois Power Co.	09-04-85	B		
ST85-1673	El Paso Natural Gas Co.	Valero Industrial Gas Co.	09-04-85	B		
ST85-1674	El Paso Natural Gas Co.	Border Steel Rolling Mills, Inc.	09-04-85	F(157)		
ST85-1675	Mountain Fuel Resources, Inc.	J.R. Simplot Co.	09-05-85	F(157)		
ST85-1676	Mountain Fuel Resources, Inc.	Cascade Natural Gas Corp.	09-04-85	B		
ST85-1677	Columbia Gulf Transmission Co.	West Ohio Gas Co.	09-06-85	B		
ST85-1678	Midwestern Gas Transmission Co.	Armour-Pharmaceutical Co.	09-05-85	F(157)		
ST85-1679	Southern Natural Gas Co.	Southwire Co., Inc.	09-05-85	F(157)		
ST85-1680	Southern Natural Gas Co.	Harbison-Walker Refractories	09-05-85	F(157)		
ST85-1681	Northern Natural Gas Co.	Michigan Consolidated Gas Co.	09-05-85	B		
ST85-1682	Texas Gas Transmission Corp.	Kimberly-Clark Corp.	09-06-85	F(157)		
ST85-1683	Texas Gas Transmission Corp.	Kellogg Co.	09-06-85	F(157)		
ST85-1684	Transcontinental Gas Pipe Line Corp.	Ponchartrain natural Gas System	09-06-85	B		
ST85-1685	Valero Transmission Co.	Southern California Gas Co.	09-06-85	C		
ST85-1686	ANR Pipeline Co.	El Paso Natural Gas Co.	09-06-85	G		
ST85-1687	ANR Pipeline Co.	Pacific Lighting Gas Supply Co.	09-06-85	B		
ST85-1688	ANR Pipeline Co.	Bridgeline Gas Distribution Co.	09-06-85	B		
ST85-1689	Northwest Central Pipeline Corp.	Armour Pharmaceutical Co.	09-03-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-1690	Southern Natural Gas Co.	Harbison-Walker Refractories	09-05-85	F(157)		
ST85-1691	Columbia Gas Transmission Corp.	Johnson County Gas Co.	09-06-85	B		
ST85-1692	Columbia Gulf Transmission Corp.	Northern Interstate Pipeline Co.	09-06-85	B		
ST85-1693	Columbia Gas Transmission Corp.	General Refractories Co.	09-06-85	F(157)		
ST85-1694	Columbia Gulf Transmission Corp.	North Metal and Chemical Co.	09-06-85	F(157)		
ST85-1695	Columbia Gas Transmission Corp.	West Ohio Gas Co.	09-06-85	B		
ST85-1696	Columbia Gas Transmission Corp.	North Metal and Chemical Co.	09-06-85	F(157)		
ST85-1697	Tennessee Gas Pipeline Co.	Kimberly-Clark Corp.	09-09-85	F(157)		
ST85-1698	Tennessee Gas Pipeline Co.	Allied Corp.	09-09-85	F(157)		
ST85-1699	Midwestern Gas Transmission Co.	N-Ren Corp.	09-09-85	F(157)		
ST85-1700	Tennessee Gas Pipeline Co.	Bridgeline Gas Distribution Co.	09-09-85	B		
ST85-1701	Channel Industries Gas Co.	Transcontinental Gas Pipe Line Corp.	09-09-85	C		
ST85-1702	Natural Gas Pipeline Co. of America	Colorado Interstate Gas Co.	09-09-85	G		
ST85-1703	Consolidated Gas Transmission Corp.	West Virginia University	009-09-85	F(157)		
ST85-1704	Panhandle Eastern Pipe Line Co.	Northern Illinois Gas Co.	09-09-85	B		
ST85-1705	Consolidated Gas Transmission Corp.	West Virginia Paving, Inc.	09-09-85	F(157)		
ST85-1706	Columbia Gulf Transmission Co.	Louisiana Intrastate Gas Co.	09-10-85	B		
ST85-1707	Producer's Gas Co.	Southwest Gas Corp.	09-10-85	D		
ST85-1708	ANR Pipeline Co.	Armour Pharmaceutical Co.	09-10-85	F(157)		
ST85-1709	El Paso Natural Gas Co.	Southwest Gas Corp.	09-10-85	G		
ST85-1710	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	09-10-85	B		
ST85-1711	El Paso Natural Gas Co.	Cascade Natural Gas Corp.	09-10-85	B		
ST85-1712	Southern Natural Gas Co.	Archer Daniels Midland Co.	09-11-85	F(157)		
ST85-1713	Southern Natural Gas Co.	Bickerstaff Clay Products Co., Inc.	09-11-85	F(157)		
ST85-1714	Southern Natural Gas Co.	Harbison-Walker Refractories	09-11-85	F(157)		
ST85-1715	Southern Natural Gas Co.	Bickerstaff Clay Products Co., Inc.	09-11-85	F(157)		
ST85-1716	Northern Border Pipeline Co.	Arcadian Corp.	09-11-85	F(157)		
ST85-1717	Southern Natural Gas Co.	Bickerstaff Clay Products Co., Inc.	09-11-85	F(157)		
ST85-1718	Southern Natural Gas Co.	Harbison-Walker Refractories	09-11-85	F(157)		
ST85-1719	Houston Pipe Line Co.	Florida Transmission Co.	09-12-85	C		
ST85-1720	Intrastate Gathering Corp.	various local distribution companies	09-03-85	C		
ST85-1721	Northern Border Pipeline Co.	Northern Illinois Gas Co.	09-11-85	B		
ST85-1722	Northwest Pipeline Corp.	Southwest Gas Corp.	09-12-85	G		
ST85-1723	Panhandle Eastern Pipe Line Co.	Northern Illinois Gas Co.	09-12-85	B		
ST85-1724	Trunkline Gas Co.	Faustina Pipe Line Co.	09-12-85	B		
ST85-1725	Panhandle Eastern Pipe Line Co.	Hurley Medical Center	09-12-85	F(157)		
ST85-1726	Trunkline Gas Co.	Exxon Gas System, Inc.	09-12-85	B		
ST85-1727	Mississippi Fuel Co.	Transcontinental Gas Pipe Line Co.	09-12-85	C	02-09-86	14.63
ST85-1728	Trunkline Gas Co.	Northern Illinois Gas Co.	09-09-85	B		
ST85-1729	Tennessee Gas Pipeline Co.	East Ohio Gas Co.	09-12-85	B		
ST85-1730	Panhandle Gas Co.	Pacific Gas and Electric Co.	09-12-85	D		
ST85-1731	Oasis Pipe Line Co.	Pacific Gas and Electric Co.	09-12-85	C		
ST85-1732	Houston Pipe Line Co.	American Distribution Co.	09-12-85	C		
ST85-1733	Panhandle Eastern Pipe Line Co.	Faustina Pipe Line Co.	09-12-85	B		
ST85-1734	Columbia Gulf Transmission Co.	Monterey Pipeline Co.	09-12-85	B		
ST85-1735	Northern Natural Gas Co.	Wisconsin Southern Gas Co., Inc.	09-12-85	B		
ST85-1736	Trunkline Gas Co.	Atlanta Gas Light	09-12-85	B		
ST85-1737	Panhandle Eastern Pipe Line Co.	RCA Corp.	09-12-85	F(157)		
ST85-1738	Trunkline Gas Co.	Northern Illinois Gas Co.	09-12-85	B		
ST85-1739	Consolidated Gas Transmission Corp.	The East Ohio Gas Co.	09-12-85	B		
ST85-1740	Houston Pipe Line Co.	Northern Natural Gas Co.	09-12-85	C		
ST85-1741	Northwest Pipeline Corp.	Cascade Natural Gas Co.	09-12-85	B		
ST85-1743	Panhandle Eastern Pipe Line Co.	St. Joseph Hospital	09-12-85	F(157)		
ST85-1744	Trunkline Gas Co.	Mobil Vanderbilt-Beaumont Pipeline	09-12-85	B		
ST85-1745	Transcontinental Gas Pipe Line Corp.	Certaineed Corp.	09-13-85	F(157)		
ST85-1746	Transcontinental Gas Pipe Line Corp.	Borden Brick and Tile Co.	09-13-85	F(157)		
ST85-1747	Transcontinental Gas Pipe Line Corp.	Murdoch Center	09-13-85	F(157)		
ST85-1748	Northern Natural Gas Co.	Peoples Natural Gas Co.	09-13-85	B		
ST85-1749	American Pipeline Co.	American Distribution Co., Inc.	09-12-85	C		
ST85-1750	American Distribution Co., Inc.	Southern Natural Gas Co.	09-13-85	G(HT)		
ST85-1751	MGTC, Inc.	MIGC, Inc.	09-20-85	C	02-17-86	03.12
ST85-1752	Northern Natural Gas Co.	Southwest Gas Corp.	09-13-85	B		
ST85-1753	Northern Natural Gas Co.	Pacific Lighting and Gas Supply Co.	09-13-85	B		
ST85-1754	Northern Natural Gas Co.	New Jersey Natural Gas Co.	09-13-85	B		
ST85-1755	Texas Gas Transmission Corp.	Dow Corning Corp.	09-13-85	F(157)		
ST85-1756	ANR Pipeline Co.	James River Corp.	09-13-85	F(157)		
ST85-1757	Natural Gas Pipeline Co. of America	Elizabethtown Gas Co.	09-20-85	B		
ST85-1758	Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	09-13-85	B		
ST85-1759	Oklahoma Natural Gas Co.	ANR Pipeline Co.	09-05-85	C	02-02-86	10.00
ST85-1760	Transcontinental Gas Pipe Line Corp.	Triangle Brick Co.	09-13-85	F(157)		
ST85-1761	Transcontinental Gas Pipe Line Corp.	Uniglass Industries	09-13-85	F(157)		
ST85-1762	Transcontinental Gas Pipe Line Corp.	Sanford Finishing Corp.	09-13-85	F(157)		
ST85-1763	Transcontinental Gas Pipe Line Corp.	Ajinomoto U.S.A., Inc.	09-13-85	F(157)		
ST85-1764	Transcontinental Gas Pipe Line Corp.	Ball Corp.	09-13-85	F(157)		
ST85-1765	Transcontinental Gas Pipe Line Corp.	Carisbrook Yarns	09-13-85	F(157)		
ST85-1766	Transcontinental Gas Pipe Line Corp.	Mallinckrodt, Inc.	09-13-85	F(157)		
ST85-1767	Panhandle Eastern Pipe Line Co.	Alumax Recycling Group, Inc.	09-16-85	F(157)		
ST85-1768	Trunkline Gas Co.	THC Pipeline Co.	09-16-85	B		
ST85-1769	Texas Eastern Transmission Corp.	Brooklyn Union Gas Co.	09-16-85	B		
ST85-1770	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	09-16-85	B		
ST85-1771	Texas Eastern Transmission Corp.	Consolidated Edison Co. of NY, Inc.	09-16-85	B		
ST85-1772	Southern Natural Gas Co.	American Distribution Co., Inc.	09-16-85	B		
ST85-1773	ANR Pipeline Co.	New Jersey Natural Gas Co.	09-16-85	B		
ST85-1774	ANR Pipeline Co.	Northern Illinois Gas Co.	09-16-85	B		
ST85-1775	Northern Natural Gas Co.	Arcadian Corp.	09-16-85	F(157)		
ST85-1776	Texas Gas Transmission Corp.	Owens-Corning Fiberglas Corp.	09-16-85	F(157)		
ST85-1777	Transcontinental Gas Pipe Line Corp.	Owens-Corning Fiberglas Corp.	09-16-85	F(157)		
ST85-1778	Transcontinental Gas Pipe Line Corp.	Owens-Corning Fiberglas Corp.	09-16-85	F(157)		
ST85-1779	United Gas Pipe Line Co.	Louisiana State Gas Corp.	09-16-85	B		
ST85-1780	Texas Eastern Transmission Corp.	Consolidated Gas Transmission Corp.	09-03-85	G		
ST85-1781	United Gas Pipe Line Co.	Central Hudson Electric & Gas Co.	09-17-85	B		
ST85-1782	United Gas Pipe Line Co.	Orange and Rockland Utilities	09-17-85	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-1783	United Gas Pipe Line Co.	Pacific Gas and Electric Co.	09-17-85	B		
ST85-1784	United Gas Pipe Line Co.	Pacific Lighting Gas Supply Co.	09-17-85	B		
ST85-1785	United Gas Pipe Line Co.	Louisiana State Gas Corp.	09-17-85	B		
ST85-1786	United Gas Pipe Line Co.	Public Service Electric and Gas Co.	09-17-85	B		
ST85-1787	Panhandle Eastern Pipe Line Co.	General Motors Corp.	09-17-85	F(157)		
ST85-1788	Panhandle Eastern Pipe Line Co.	Mueller Co.	09-17-85	F(157)		
ST85-1789	Texas Gas Transmission Corp.	Pioneer Asphalt	09-17-85	F(157)		
ST85-1790	Florida Gas Transmission Co.	Faustina Pipeline Co.	09-17-85	B		
ST85-1791	Inland Gas Company, Inc.	General Refractories Co.	09-06-85	F(157)		
ST85-1792	Texas Eastern Transmission Corp.	Ball Corp.	09-06-85	F(157)		
ST85-1793	Texas Eastern Transmission Corp.	U.S. Metals Refining Co.	09-06-85	F(157)		
ST85-1794	Southern Natural Gas Co.	Diamond-Bathrust, Inc.	09-21-85	F(157)		
ST85-1795	United Gas Pipe Line Co.	Texas Industrial Energy Co.	09-19-85	B		
ST85-1796	United Gas Pipe Line Co.	Texas Industrial Energy Co.	09-18-85	B		
ST85-1797	United Gas Pipe Line Co.	TXO Production Corp.	09-19-85	B		
ST85-1798	United Gas Pipe Line Co.	Santa Fe Gas Marketing Co.	09-19-85	B		
ST85-1799	Texas Gas Transmission Corp.	St. Joseph Hospital	09-19-85	F(157)		
ST85-1800	Sea Robin Pipeline Co.	Roanoke Gas Co.	09-16-85	B		
ST85-1801	Natural Gas Pipeline Co. of America	Neches Pipeline System	09-16-85	B		
ST85-1802	Texas Gas Transmission Corp.	Consolidated Gas Transmission Corp.	09-19-85	G		
ST85-1803	United Gas Pipe Line Co.	Atlanta Gas Light Co.	09-19-85	B		
ST85-1804	United Gas Pipe Line Co.	Public Service Electric and Gas Co.	09-19-85	B		
ST85-1805	Valero Transmission Co.	Northern Natural Gas Co.	09-19-85	C		
ST85-1806	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	09-19-85	B		
ST85-1807	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	09-19-85	B		
ST85-1808	Northern Natural Gas Co.	West Texas Gas Inc.	09-19-85	B		
ST85-1809	Northwest Central Pipeline Corp.	Vulcan Materials Co.	09-20-85	F(157)		
ST85-1810	Columbia Gulf Transmission Co.	Diamond-Bathrust, Inc.	09-20-85	F(157)		
ST85-1811	Columbia Gulf Transmission Co.	Continental Fibre Drum Corp.	09-20-85	F(157)		
ST85-1812	Columbia Gas Transmission Corp.	Diamond-Bathrust, Inc.	09-20-85	F(157)		
ST85-1813	Columbia Gas Transmission Corp.	Continental Fibre Drum Corp.	09-20-85	F(157)		
ST85-1814	Natural Gas Pipeline Co. of America	THC Pipeline Co.	09-20-85	B		
ST85-1815	Houston Pipe Line Co.	Northern Natural Gas Co.	09-23-85	C		
ST85-1816	Oasis Pipe Line Co.	Northern Natural Gas Co.	09-23-85	C		
ST85-1817	United Gas Pipe Line Co.	Columbia Nitro. Corp. & Nipro, Inc.	09-24-85	F(157)		
ST85-1818	United Gas Pipe Line Co.	Southwire Co.	09-24-85	F(157)		
ST85-1819	United Gas Pipe Line Co.	Consolidated Edison Co. of NY, Inc.	09-24-85	B		
ST85-1820	Panhandle Eastern Pipe Line Co.	Memorial Medical Center	09-24-85	F(157)		
ST85-1821	Panhandle Eastern Pipe Line Co.	The Board of Education of the City of Peoria School District #150.	09-24-85	F(157)		
ST85-1822	Trunkline Gas Co.	Pontchartrain Natural Gas System	09-24-85	B		
ST85-1823	United Gas Pipe Line Co.	Elizabethtown Gas Co.	09-24-85	B		
ST85-1824	United Gas Pipe Line Co.	Owens-Illinois, Inc.	09-24-85	F(157)		
ST85-1825	United Gas Pipe Line Co.	Roanoke Gas Co.	09-24-85	B		
ST85-1826	Columbia Gulf Transmission Co.	Jessop Steel Co.	09-24-85	F(157)		
ST85-1827	Transcontinental Gas Pipe Line Corp.	Witco Chemical Co.	09-24-85	F(157)		
ST85-1828	Transcontinental Gas Pipe Line Corp.	Ingersoll Rand.	09-24-85	F(157)		
ST85-1829	Transcontinental Gas Pipe Line Corp.	Ford Motor Co.	09-24-85	F(157)		
ST85-1830	Transcontinental Gas Pipe Line Corp.	Libby-Owens-Ford Co.	09-24-85	F(157)		
ST85-1831	Transcontinental Gas Pipe Line Corp.	Kelly-Springfield Tire Co.	09-24-85	F(157)		
ST85-1832	Transcontinental Gas Pipe Line Corp.	City of Lindon, AL.	09-24-85	B		
ST85-1833	United Gas Pipe Line Co.	Columbia Nitro. Corp. & Nipro, Inc.	09-24-85	F(157)		
ST85-1834	Consolidated Gas Transmission Corp.	Owens Illinois, Inc.	09-25-85	F(157)		
ST85-1835	Arkla Energy Resources (Intrastate)	CITGO Petroleum Corp.	09-28-85	C/F(157)		
ST85-1836	Channel Industries Gas Co.	Esperanza Gas Co.	09-06-85	C		
ST85-1837	Texas Eastern Transmission Corp.	Lavaca Pipe Line Co.	09-25-85	B		
ST85-1838	ANR Pipeline Co.	J. R. Simplot Co.	09-25-85	F(157)		
ST85-1839	ANR Pipeline Co.	N-Ren Corp.	09-25-85	F(157)		
ST85-1840	Transcontinental Gas Pipe Line Corp.	New Jersey Natural Gas Co.	09-26-85	B		
ST85-1841	El Paso Natural Gas Co.	Southwest Gas Corp.	09-26-85	B		
ST85-1842	Endevco Pipeline Co.	Mississippi River Transmission Corp.	09-26-85	D		
ST85-1843	Texas Gas Transmission Corp.	Owens-Corning Fiberglas Corp.	09-26-85	F(157)		
ST85-1844	Texas Gas Transmission Corp.	TRAVENOL Laboratories, Inc.	09-26-85	F(157)		
ST85-1845	Michigan Gas Storage Co.	General Motors Corp.	09-26-85	F(157)		
ST85-1846	Texas Eastern Transmission Corp.	Consolidated Gas Transmission Corp.	09-27-85	G		
ST85-1847	Texas Eastern Transmission Corp.	Boston Gas Co.	09-27-85	B		
ST85-1848	Midwestern Gas Transmission Co.	Kelly-Springfield Tire Co.	09-27-85	F(157)		
ST85-1849	Trunkline Gas Co.	Louisiana State Gas Corp.	09-27-85	B		
ST85-1850	Natural Gas Pipeline Co. of America	Sheffield Steel Corp.	09-27-85	F(157)		
ST85-1851	Natural Gas Pipeline Co. of America	United States Steel	09-27-85	F(157)		
ST85-1852	Gas Gathering Corp.	Monterey Pipe Line Co.	09-27-85	B		
ST85-1853	Michigan Gas Storage Co.	Hurley Medical Center	09-27-85	F(157)		
ST85-1854	Michigan Gas Storage Co.	St. Joseph Hospital	09-27-85	F(157)		
ST85-1855	Michigan Gas Storage Co.	Dow Corning Corp.	09-27-85	F(157)		
ST85-1856	Columbia Gas Transmission Corp.	The Brewer Co.	09-27-85	F(157)		
ST85-1857	Columbia Gas Transmission Corp.	LTV Steel Co., Inc.	09-27-85	F(157)		
ST85-1858	Columbia Gulf Transmission Co.	LTV Steel Co., Inc.	09-27-85	F(157)		
ST85-1859	The Inland Gas Co., Inc.	Columbia Gas of Maryland	09-27-85	B		
ST85-1860	The Inland Gas Co., Inc.	Columbia Gas of Ohio	09-27-85	B		
ST85-1861	Columbia Gulf Transmission Corp.	The Brewer Co.	09-27-85	F(157)		
ST85-1862	Transwestern Pipeline Co.	Northern Natural Gas Co.	09-27-85	G		
ST85-1863	The Inland Gas Co., Inc.	Columbia Gas of New York	09-27-85	B		
ST85-1864	Northern Natural Gas Co.	Boston Gas Co.	09-30-85	B		
ST85-1865	ANR Pipeline Co.	Pacific Lighting Gas Supply Co.	09-30-85	B		
ST85-1866	United Gas Pipe Line Co.	Caddo Natural Gas Co.	09-30-85	B		
ST85-1867	United Gas Pipe Line Co.	Tonngasco Corp.	09-30-85	B		
ST85-1868	Texas Gas Transmission Corp.	U.S. Gypsum Co.	09-30-85	F(157)		
ST85-1869	Houston Pipe Line Co.	Piedmont Natural Gas Co., Inc.	09-30-85	C		
ST85-1870	Oasis Pipe Line Co.	Pacific Lighting Gas Supply Co.	09-30-85	C		
ST85-1871	Oasis Pipe Line Co.	Pacific Lighting Gas Supply Co.	09-30-85	C		
ST85-1872	Houston Pipe Line Co.	Petrofina Gas Pipeline Co.	09-30-85	C		
ST85-1873	Panhandle Gas Co.	Pacific Lighting Gas Supply Co.	09-30-85	D		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-1874	Panhandle Gas Co.	Piedmont Natural Gas Co., Inc.	09-30-85	D		
ST85-1875	Natural Gas Pipeline Co. of America	THC Pipeline	09-30-85	B		
ST85-1876	Red River Pipeline	El Paso Natural Gas Co.	09-30-85	C		
ST85-1877	Arkla Energy Resources (Intrastate)	Arkla Energy Resources (Interstate)	09-30-85	C		
ST85-1878	Liberty Natural Gas Co.	Lone Star Steel Co.	09-30-85	C/F(157)		
ST85-1879	Arkla Energy Resources	Liberty Natural Gas Co.	09-30-85	B		
ST85-1880	Arkla Energy Resources	Lone Star Steel Co.	09-30-85	F(157)		
ST85-1881	ANR Pipeline Co.	Pacific Lighting Gas Supply Co.	09-30-85	B		
ST85-1882	Transok, Inc.	Providence Gas Co.	09-30-85	C	02-27-86	21.75
ST85-1883	Southern Natural Gas Co.	Union Camp Corp.	09-30-85	F(157)		
ST85-1884	Southern Natural Gas Co.	Interstate Paper Corp.	09-30-85	F(157)		
ST85-1885	Southern Natural Gas Co.	DivorsiTech General, Inc.	09-30-85	F(157)		
ST85-1886	Northern Natural Gas Co.	Pacific Lighting Gas Supply Co.	09-27-85	B		
ST85-1887	Northern Natural Gas Co.	Pacific Gas and Electric Co.	09-27-85	B		
ST85-1888	Transcontinental Gas Pipe Line Corp.	E. I. DuPont de Nemours & Co.	09-27-85	F(157)		
ST85-1889	Transcontinental Gas Pipe Line Corp.	B. F. Goodrich Co.	09-27-85	F(157)		
ST85-1890	Somerset Gas Service	New Jersey Natural Gas Co.	09-23-85	C		
	Riverway Gas Pipeline Co. filed the following Petition for Rate Approval subsequent to their initial report. The rate petition is noticed at this time to give interested parties the appropriate 150-day comment period.					
ST85-717	Riverway Gas Pipeline Co.	Texas Gas Transmission Corp.	09-30-85	C	02-27-86	21.90

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-28083 Filed 11-22-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST80-113-003, et al.]

Valero Transmission Co. et al.; Extension Reports

November 19, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before December 6, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[1] Notice of these extension reports does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date[1]
ST80-113-003	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	El Paso Natural Gas Co.	10-15-85	C	01-15-86	
ST82-125-002[2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Tennessee Gas Pipeline Co.	10-10-85	G	01-04-86	01-06-86
ST82-175-002	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Westar Transmission Co.	10-04-85	B	01-11-86	
ST82-189-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Northern Natural Gas Co.	10-15-85	C	01-25-86	
ST82-194-002	Producer's Gas Co., 950 One Energy Square, Dallas, TX 75206	Panhandle Eastern Pipeline Co.	10-11-85	C	01-22-86	
ST82-195-002	Producer's Gas Co., 950 One Energy Square, Dallas, TX 75206	Transwestern Pipline Co.	10-11-85	C	01-22-86	
ST83-605-001[2]	Superior Offshore Pipeline Co., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Texas Eastern Transmission Corp.	10-15-85	G	05-01-85	01-13-86
ST84-65-001[2]	Superior Offshore Pipeline Co., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Louisiana Gas System, Inc.	10-15-85	B	10-11-85	01-13-86
ST84-66-001[2]	Superior Offshore Pipeline Co., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Louisiana Gas System, Inc.	10-15-85	B	10-26-85	01-13-86
ST84-311-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Texas Gas Transmission Corp.	10-02-85	G	01-03-86	
ST84-315-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Delhi Gas Pipeline Corp.	10-15-85	B	01-13-86	
ST84-370-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Florida Gas Transmission Corp.	10-10-85	G	01-09-86	
ST84-371-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Creole Gas Pipeline Corp.	10-11-85	B	01-12-86	
ST84-385-001	Llano, Inc., P.O. Box 1320, Hobbs, NM 88241	HNG Industrial Natural Gas Co.	10-15-85	C	01-17-86	
ST84-441-001	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	Florida Gas Transmission Co.	10-15-85	C	02-02-86	
ST84-449-001[2]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co.	10-09-85	B	12-01-85	01-07-86

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [1]
ST84-501-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Louisiana Industrial Gas Supply Corp	10-15-85	B	01-13-86	
ST84-505-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Producer's Gas Co	10-15-85	B	01-13-86	
ST84-509-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	United Cities Gas Co	10-10-85	B	01-12-86	
ST84-517-001	Locust Ridge Gas Co., 3400 West Marshall Ave., Longview, TX 75608	Southern Natural Gas Co	10-15-85	G	01-12-86	
ST84-525-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Producer's Gas Co	10-15-85	B	01-15-86	
ST85-541-001	Northwest Pipeline Corp., P.O. Box 8900, Salt Lake City, UT 84108	Faustina Pipe Line Co	10-02-85	B	01-01-86	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE: The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-28084 Filed 11-22-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL85-19-102]

Owens River Basin, CA; Cluster Impact Assessment Procedure: Notice of Scoping Meetings, for Environmental Impact Statement and Technical Sessions

November 20, 1985.

The Staff of the Federal Energy Regulatory Commission (Commission) as part of its Cluster Impact Assessment Procedure (CIAP) for the Owens River Basin has decided to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act on seven proposed hydroelectric projects (FERC Project Nos. 3528, 3583, 3741, 3742, 4669, 6114 and 6188) in the Owens River Basin. In a public notice issued by the Commission on October 25, 1985, it was announced that as part of the CIAP the Commission staff would conduct a scoping session during the week of December 2-6, 1985, to identify major and minor environmental impacts on non-target resources and to identify all reasonable alternatives to the proposed hydroelectric development. The October 25, 1985 notice also announced that a technical session on the Multiple Project Assessment Phase of the CIAP would be held in conjunction with the scoping sessions during the same week.

Two scoping meetings on the EIS will be held at 9:00 a.m. and 7:30 p.m. on Tuesday, December 3, 1985. Two technical sessions on the Multiple Project Assessment Phase of the CIAP will be held at 9:00 a.m. on December 4, and 5, 1985. The scoping meetings and technical sessions will be held at the Inyo National Forest Conference Room at 873 North Maine Street in Bishop California.

All interested resource agencies, developers, tribal representatives, and other parties are invited to attend the scoping meetings and technical sessions. In order to be useful in the preparation of the EIS, all written comments on the EIS must be received by the Commission no later than December 20, 1985.

All comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Also, the following caption should be affixed to all comments: Owens River Basin, California, Docket No. EL85-19-102

For further information please contact Commission staff project manager Ron McKitrick at (202) 376-9065).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28078 Filed 11-22-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8662-000 et al.]

Hydroelectric Applications (Nockamixon Hydro Associates et al.,); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Minor License.
b. Project No.: 8662-000.
c. Date Filed: October 15, 1984.
d. Applicant: Nockamixon Hydro Associates.
e. Name of Project: Nockamixon.
f. Location: Tohickon Creek in Bucks County, Pennsylvania.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Contact Person: Mr. David M. Commbe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.
i. Comment Date: December 27, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 112-foot-high, 1,511-foot-long earth and rockfilled dam; (2) an existing reservoir with a normal water surface area of 1,450 acres, a storage capacity of 40,000 acre-feet at normal water surface elevation of 395 feet MSL; (3) an existing reinforced concrete intake tower; (4) two existing 344-foot-long, 10.5 by 10.5-foot horseshoe shaped concrete conduits; (5) an existing 72-inch-diameter, 344-foot-long steel penstock located inside the right conduit; (6) a new reinforced concrete powerhouse containing one generating unit with a capacity of 120 kW, one generating unit with a capacity of 360 kW, and one generating unit with a capacity of 1000 kW for a total installed capacity of 1480 kW; (7) an existing 800-foot-long tailrace; (8) a new transmission line, 350-feet-long; and (9) appurtenant facilities. The Applicant estimates that the average annual generation would be 3,000,000 kWh. The existing dam is owned by the Commonwealth of Pennsylvania.
k. Purpose of Project: Project power would be sold to the Metropolitan Edison Company.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

a. Type of Application: Preliminary Permit.
b. Project No.: 9307-000.
c. Date Filed: July 2, 1985.
d. Applicant: Custer-Butte Hydro Associates.
e. Name of Project: Dry Creek Power.
f. Location: On Dry Creek, using lands of the United States administered by the Bureau of Land Management in Custer and Butte Counties, Idaho.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Contact Person: Louis Roseman, 1350 New York Avenue, #600, Washington, DC 20005.
i. Comment Date: December 30, 1985.
j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 300-foot-long native rock diversion dam with the crest at elevation 7,386 feet; (2) a 36-inch-diameter, 65,000-foot-long penstock; (3) a powerhouse at elevation 6,300 feet containing a generation unit rated at 2,000 kW producing an average annual output of 12.0 GWh; (4) a 65-foot-long tailrace; and (5) a 200-foot-long, 69-kV transmission line connecting to an existing Idaho Power and Light Company Line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct

and operate the project. Applicant has stated that no new roads are necessary to conduct the studies. The estimated cost of permit activities is $145,000.

k. Purpose of Project: To generate power for sale to Idaho Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

a. Type of Application: Preliminary Permit.

b. Project No.: 9310–000.

c. Date Filed: July 2, 1985.

d. Applicant: Mount Pleasant City Corporation.

e. Name of Project: Pleasant Creek.

f. Location: On Pleasant Creek, near Mt. Pleasant, in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Alden C. Robinson, P.E., Sunrise Engineering, Inc., P.O. Box 186, Fillmore, UT 84731.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 4-foot-wide, 3-foot-long, 3-foot-deep inlet box at elevation 7,680 feet; (2) an existing 16-inch-diameter, 6,000-foot-long penstock; (3) the upper powerhouse with a total installed capacity of 288 kW; (4) an existing 25-foot-wide, 15-foot-long, 5-foot-deep inlet box at elevation 7,240 feet; (5) an existing 16-inch-diameter, 5,950-foot-long penstock; (6) the lower powerhouse with a total installed capacity of 350 kW; (7) a diversion dam at elevation 6,900 feet creating a 1.5-acre-pond with a storage capacity of 15 acre-feet; (8) a 24-inch-diameter, 15,600-foot-long penstock; (9) the powerhouse number 4 with a total installed capacity of 1,000 kW; (10) a diversion dam at elevation 6,260 feet, creating a 1.5-acre-pond with a storage capacity of 15 acre-feet; (11) a 24-inch-diameter, 12,200-foot-long penstock (12) the powerhouse number 3 with a total installed capacity of 230 kW; and (13) a 0.25-mile-long, 12.47–kV transmission line connecting with Applicant's existing transmission line. The power generated would be utilized by the Applicant to satisfy its power needs.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9324–000.

c. Date Filed: July 3, 1985.

d. Applicant: Nashua Hydro Associates.

e. Name of Project: Cedar Lake Dam Hydroelectric Project.

f. Location: On the Cedar River in Chickasaw County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW. #600, Washington, DC 20005.

i. Comment Date: December 30, 1985.

j. Description of Project: The Applicant would utilize an existing dam owned by the Iowa Public Service Company. The proposed project would consist of: (1) A 16-foot-high, 258-foot-long concrete and earthen dam; (2) an existing reservoir with a surface area of 700 acres and a storage capacity of 7,000 acre-feet at powerpool elevation of 856 feet m.s.l.; (3) a proposed 20-foot-long, 4-foot-diameter penstock; (4) an existing powerhouse, which would be renovated, containing a proposed generating unit rated at 680 kW; (5) an existing tailrace; (6) a proposed 75-foot-long, 12.5–kV transmission line; and (7) appurtenant facilities. The estimated average annual energy output is 3.0 GWh.

k. Purpose of Project: The energy produced at the project would be sold to the Interstate Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $140,000.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9327–000.

c. Date Filed: July 3, 1985.

d. Applicant: Decorah Hydro Associates.

e. Name of Project: Decorah Dam Hydroelectric Project.

f. Location: On the Upper Iowa River in Winneshiek County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW. #600, Washington, DC 20005.

i. Comment Date: December 30, 1985.

j. Description of Project: The Applicant would utilize an existing dam owned by the Iowa State Conservation Commission. The proposed project would consist of: (1) A 27.5-foot-high, 275-foot-long concrete and earthen dam; (2) an existing reservoir with a surface area of 38 acres and a storage capacity of 270 acre-feet at powerpool elevation of 902 feet m.s.l.; (3) a proposed 75-foot long and 10-foot-diameter penstock; (4) an existing powerhouse, which would be renovated, containing one proposed generating unit rated at 670 kW; (5) an existing tailrace; (6) a proposed 45-foot-long, 12.5–kV transmission line; and (7) appurtenant facilities. The estimated average annual energy output is 2.9 GWh.

k. Purpose of Project: The energy produced at the project would be sold to the Interstate Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $105,000.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9344–000.

c. Date Filed: July 12, 1985.

d. Applicant: Enviro Hydro, Inc.

e. Name of Project: Ladies Canyon Creek.

f. Location: On Ladies Canyon Creek, near Sierra City, in Sierra County, California, within Tahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. H. L. Childers, Enviro Hydro, Inc., 9200 Shanley Lane, Auburn, CA 95603.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 30-foot-long diversion dam at elevation 4,600 feet; (2) a 24-inch-diameter, 2,500-foot-long low pressure conduit; (3) a 20-inch-diameter 3,000-foot-long penstock; (4) a powerhouse with total installed capacity of 110 kW; and (5) a 1000-foot-long, 12.5–kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The power generated would be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9375–000.

c. Date Filed: August 1, 1985.

d. Applicant: Hardware Ranch Associates.

e. Name of Project: Blacksmith Fork.

f. Location: On Blacksmith Fork River in Cache County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: December 27, 1985.

j. Description of Project: The proposed project would be located entirely within the Wasatch-Cache National Forest, would utilize an existing dam owned by the State of Utah, and would consist of: (1) The existing concrete dam, about 50 feet high; (2) a small-reservoir; (3) a pipeline/penstock, 48 inches in diameter and about 10,600 feet long, utilizing the existing dam outlet work; (4) a powerhouse with an installed capacity of 1,575 kW operating under a head of 200 feet; (5) a short tailrace returning flow to the river; (6) a transmission line, about 3,000 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 8,136,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9390–000.

c. Date Filed: August 5, 1985.

d. Applicant: American Hydro Power Company.

e. Name of Project: Pymatuning Dam.

f. Location: On the Shenango River in Crawford County, Pennsylvania and Astabula County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 33 Rock Hill Road, Bala Cynwyd, PA 19004–2010.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing earth dam 50 feet high and 2,400 feet long; (2) a reservior having a surface area of 15,400 acres with a storage capacity of 217,000 acre-feet at a normal water surface elevation of 1,010 feet m.s.l. with; (3) two-foot-high flashboards; (4) an existing concrete intake structure; (5) an existing 6-foot by 8-foot rectangular concrete box conduit 250 feet long; (6) a new powerhouse containing 3 generating units having a total generating capacity of 670 kW; (7) an existing tailrace 900 feet long; (8) a new 12.47-kV transmission line 1,200 feet long; (9) an existing access road; and (10) appurtenant facilities. The Applicant estimates the average annual generation would be 2,920,000 kWh. The existing dam is owned by the Commonwealth of Pennsylvania.

k. Purpose of Project: Project power would be sold to the Pennsylvania Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9434–000.

c. Date Filed: September 5, 1985.

d. Applicant: Carex Hydro.

e. Name of Project: Wartburg Hydro Project.

f. Location: On the Crooked Fork near Wartburg, Morgan County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jean-Claude Leroy, 201 Woodycrest Avenue, Nashville, TN 37210.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high and 120-foot-long water intake structure comprised of an intake chamber, primary screen, gate, and sedimentation cell; (2) a 4-foot-diameter and 6,800-foot-long penstock; (3) a new powerhouse housing two 700-kW generators for a total installed capacity of 1,400 kW; (4) a new 12.47-kV transmission line approximately 8,100 feet long; and (5) appurtenant facilities. Applicant estimates an average annual generation of 7,000 MWh. All project energy would be sold to Plateau Electric Cooperative and the Tennessee Valley Authority.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9445–000.

c. Date Filed: September 10, 1985.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: Warm River Associates.

f. Location: On Warm River in the Targhee National Forest near the town of Ashton, in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, Great Western Power and Light, Inc., 484 East 300 North, Manti,UT 84642.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 5,680 feet; (2) a 4,000-foot-long, 72-inch-diameter penstock; (3) a powerhouse containing three generating units with a total rated capacity of 4,500 kW; and (4) approximately 9,760 feet of transmission line. Applicant estimates the average annual energy production to be 30,900,960 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9487–000.

c. Date Filed: September 27, 1985.

d. Applicant: Cambridge Hydro Associates.

e. Name of Project: Rush Creek.

f. Location: On Rush Creek in the Payette National Forest, near the town of Cambridge, in Washington County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Esq., 1350 New York Avenue, 600, Washington, DC 20005.

i. Comment Date: January 2, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4–foot-high diversion dam at elevation 5,400 feet; (2) a 6,000-foot-long penstock; (3) a powerhouse with one generating unit with a rated capacity of 1,751 kW; and (4) a 50-foot-long transmission line. Applicant estimates the average annual energy production to be 6,196 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of project: The proposed power produced is to be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 9527–000.

c. Date Filed: October 4, 1985.

d. Applicant: Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1.

e.Name of Project: Cow Creek.

f. Location: On Cow Creek, a tributary of the Middle Fork Stanislaus River, near Stawberry, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Gary N. Egger, Tuolumne Regional Water District, P.O. Box 3728, Sonora, CA 95370, (290) 532–5536.

i. Comment Date: December 23, 1985.

j. Competing Application: Project No. 9047–000, Date Filed: 03/25/85.

k. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 12-foot-wide, 30-foot-long diversion structure across Cow Creek at elevation 4,300 feet msl; (2) a 24-inch-diameter, 3,900-foot-long pipeline; (3) a 24-inch-diameter, 1,100-foot-long penstock; (4) a powerhouse, located immediately east of Beardsley Lake at elevation 3,430 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 1,500 kW and producing an estimated average annual generation of 6.5 GWh; (5) a tailrace; and, (6) a 2.5-mile-long, 17–kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line at Cow Creek and Highway 108. Applicant intends to sell project power to PG&E. The project would occupy Stanislaus National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $160,000.

l. This notice also consists of the following standard paragraphs: A8, B, C and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 8713–000.

c. Date Filed: November 8, 1984.

d. Applicant: Kittitas Reclamation District.

e. Name of Project: Kachess Dam.

f. Location: On the Kachess River, near the towns of Easton and Cle Elum in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Stan R. Powers, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926.

i Comment Date: December 26, 1985.

j. Competing Application: Project No. 8337, Date Filed: June 1, 1984.

k. Description of Project: The proposed project would utilize the Bureau of Reclamation's Kachess Dam and reservoir and would consist of: (1) Lining the existing outlet pipe with steel; (2) a powerhouse at the toe of the dam containing a generating unit with a capacity of 4,375 kW and an average annual generation of 1,250 MWh, and (3) a 6,000-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $70,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project Power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

14a. Type of Application: 5 MW Exemption.

b. Project No.: 8264–001.

c. Date Filed: July 15, 1985.

d. Applicant: Summit Hydropower.

e. Name of Project: Falls Mill Dam No. 2.

f. Location: On the Yantic River in New London County, Connecticut.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C 2705 and 2708.

h. Contact Person: Mr. Duncan S. Broatch, Summit Hydropower, P.O. Box 122, Putnam, Connecticut 06260.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 12-foot-high, 103-foot-long granite block gravity dam with a spillway crest elevation of 68.5 feet msl. owned by the City of Norwich; (2) an existing 3.5-acre reservoir with a proposed storage capacity of 27 acre-feet after 30 inches of flashboards are reinstalled at elevation 71 feet msl; (3) an existing intake structure and forebay area to be renovated to include new trashracks, replacing the sluice gate and headgate with new wooden units and repairing the headgate operating mechanism; (4) an existing powerhouse to contain a new turbine/generator unit with an installed capacity of 136 kW; (5) an existing 50-foot-long tailrace; (6) a new 4.8–kV transmission line 317 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 600,000 kWh operating under a net hydraulic head of 15 feet.

k. Purpose of Project: Project energy would be sold to the City of Norwich.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

15a. Type of Application: Preliminary Permit.

b. Project No. 9372–000.

c. Date Filed: August 1, 1985.

d. Applicant: Las Cruses Hydro Associates.

e. Name of Project: Caballo Dam Hydroelectric Project.

f. Location: On Rio Grande River, near town of Truth, in Sierra County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Louis Rosenman, Las Cruses Hydro Associates, 1350 New York Avenue, #600, Washington, D.C. 20005.

i. Comment Date: December 27, 1985.

j. Competing Application: Project No. 9345–000, filed July 15, 1985.

k. Description of Project: The proposed project, to be located at the existing outlet of the Bureau of Reclamation's (BOR) Caballo Dam, would consist of: (1) A 12-foot-diameter, 250-foot-long penstock; (2) a powerhouse with a total installed capacity of 5,600 kW operating under a head of 120 feet; and (3) a 300-foot-long, 12.5–kV transmission line to connect to an existing Pacific Gas and Electric Company transmission line. The Applicant estimates the average annual energy generation at 18.4 GWh.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

16a. Type of Application: Minor License.

b. Project No.: 8968–001.

c. Date Filed: April 15, 1985.

d. Applicant: Rivers Electric Company, Inc.

e. Name of Projection: Woodstock Dam.

f. Location: On Catskill Creek in Greene County, New York.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).

h. Contact Person: Charles R. Pepe, 120 North Pascack Road, Spring Valley, NY 10977.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) The rehabilitation of the existing Woodstock Dam, which has an overall length of approximately 236 feet and a height of 32 feet; (2) an existing reservoir with a surface area of 15 areas at spillway crest elevation 320 feet m.s.l.; (3) the proposed addition of two-foot-high flashboards which will increase the reservoir surface area to 18 acres at surface elevation 322 feet m.s.l.; (4) the proposed reinstallation of two 5-foot-diameter, 50-foot-long penstocks; (5) the proposed installation of three 275-kW generating units in a new powerhouse, thereby containing a total installed generating capacity of 825 kW; (6) the proposed 0.48-kV generator leads; (7) the proposed 0.48/7.64-kV, 1,000 kVA transformer; (8) the proposed 50-foot-long service drop; and (9) appurtenant facilities.

The dam, impoundment and water rights are owned by Mr. August Klatz of Cairo, New York. The Applicant estimates the average annual energy generation to be 2.5 GWh. The Applicant anticipates selling the power generated to the Central Hudson Gas and Electric Corporation.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9353–000.

c. Date Filed: July 22, 1985.

d. Applicant: McCallum Hydro Enterprises.

e. Name of Projection: Rocky Glen Dam.

f. Location: On the Pootatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Donald Szarmach, 805 Housatonic Avenue, Bridgeport, Connecticut 06604.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 38-foot-high and 130-foot-long stone masonary dam with a proposed spillway crest elevation of 171.6 feet m.s.l.; (2) a proposed 5.6-acre surface area reservoir with a storage capacity of 65.6 acre-feet with a maximum surface elevation of 171 feet m.s.l.; (3) one existing sluice gate which controls the intake to a 20-foot-wide and 300-foot-long channel which transports water to; (4) a proposed powerhouse to contain one turbine/generator unit with an installed capacity of 111 kW which discharges flows back into the river; (5) an existing 13-kV transmission line 125 feet long; and (6) appurtenant facilities.

The estimated average annual energy produced by the project would be 430,000 kWh operating under a net hydraulic head of 38 feet. The owner of the dam is Newtown Mill Associates.

k. Purpose of Project: Project energy will be used by the tenants at the factory and surplus power will be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,500.

18a. Type of Application: Preliminary Permit.

b. Project No.: 9399–000.

c. Date Filed: August 8, 1985.

d. Applicant: Orange Grove Irrigation District.

e. Name of Projection: Kings River Siphon.

f. Location: On Friant-Kern Canal in Fresno County, California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Richard Moss, Manager, Orange Grove Irrigation District, 1130 Park Blvd., P.O. Box 308, Orange Grove, CA 93646.

i. Comment Date: December 30, 1985.

j. Description of Project: The proposed project would utilize the existing headworks of the Siphon carrying U.S. Bureau of Reclamation's Friant-Kern Canal beneath the Kings River and consist of: (1) A powerhouse with a total installed capacity of 1,000 kW; and (2) a 1,000-foot-long, 12-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The power generated by the project would be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

19a. Type of Application: Preliminary Permit.

b. Project No.: 9488–000.

c. Date Filed: September 27, 1985.

d. Applicant: Salmon River Pure Water Associates.

e. Name of Project: French Creek.

f. Location: On French Creek, a tributary of the Salmon River near the town of Riggins, in Idaho County, Idaho, on Federal land administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Louis Roseman, Attorney at Law, 1350 New York Avenue, 600, Washington, DC 20005.

i. Comment date: December 27, 1985.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high diversion dam at elevation 2,600 feet; (2) a 17,000-foot-long, 5-foot-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,545 kW; and (4) a 1,500-foot-long transmission line. Applicant estimates the average annual energy production to be 37.5 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare a FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

20a. Type of Application: Small Conduit Exemption.

b. Project No.: 9397-000.

c. Dated Filed: August 7, 1985.

d. Applicant: Santa Clara Valley Water District.

e. Name of Project: Kirk/Page Hydrogeneration Facility.

f. Location: On existing Central Pipeline Water Main approximately 1.2 miles downstream of Vasona Reservoir Dam south of the city of Campbell, Santa Clara County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act (16 U.S.C. 823(a)).

h. Contact Person: Mr. David K. Gill, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

i. Comment Date: December 23, 1985.

j. Description of Project: The proposed project would be located on an existing 66-inch-diameter Central Pipeline Water Main from Los Gatos Creek and consists of a 30-inch-diameter, 400-foot-long penstock; a 22-foot-long, 18-foot-wide powerhouse containing a generating unit with a rated capacity of 500 kW; a 30-inch-diameter, 1,000-foot-long outflow pipeline to Los Gatos Creek; and an 18-inch-diameter, 700-foot-long outflow pipeline to Kirk Ditch. The Applicant estimates that the average annual energy generation would be 3.37 million kWh and sold to Pacific Gas and Electric Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

21a. Type of Application: Exemption from Licensing (Conduit).

b. Project No.: 9406-000.

c. Date Filed: August 19, 1985.

d. Applicant: Tuolumne County.

e. Name of Project: Phoenix Lake Bypass.

f. Location: On Phoenix Lake Bypass ditch in Tuolumne County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Einar Maisch, Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825.

i. Comment Date: December 23, 1985.

j. Description of Project: The proposed project would utilize Tuolumne County Water Agency's existing Phoenix Lake Bypass ditch and consist of: (1) A 200-foot-long, 18-inch-diameter penstock; (2) a powerhouse with a total installed capacity of 31 kW, under a head of 37 feet; and (3) a tailrace discharging into the Phoenix Lake Bypass ditch which supplies water to the cities of Sonora and Jamestown; and (4) a switchgear and interconnection faciliteis to connect with Pacific Gas and Electric Company's (PG&E) 12.5-kV transmission line. Annual output is estimated to be 235,000 kWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in

response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 20, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28077 Filed 11–22–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–113–000]

Ogden Martin Systems of Babylon, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 19, 1985.

On October 30, 1985, Ogden Martin Systems of Babylon, Inc. (Applicant), of 140 East Ridgewood Avenue, P.O. Box 917, Paramus, New Jersey 07653 submitted for filing an applicaltion for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Babylon, New York. The net electric power production capacity of the facility will be 14.25 MW. The primary energy source will be municipal solid waste.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28079 Filed 11–22–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–151–000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Babcock & Wilcox et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

November 18, 1985.

Take notice that the following filings have been made with the Commission.

1. Babcock & Wilcox

[Docket No. QF86–151–000]

On October 30, 1985, Babcock and Wilcox, (Applicant), of 20 South Van Buren Avenue, Barberton, Ohio 44203 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been

made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Geddes, New York. The facility will consist of a single circulating fluidized boiler and a controlled extraction condensing steam turbine-generator. The extracted steam will be used for process and heating purposes by LCP chemicals and Plastics, Inc. The net electrical power production capacity of the facility will be 19.9 MW. The primary energy source will be bituminous coal. The installation of the facility is expected to begin in July 1988.

2. Allegheny No. 6 Hydro Partners

[Docket No. QF86-162-000]

On October 31, 1985, Allegheny No. 6 Hydro Partners (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 8 megawatt hydroelectric facility will be located on the Allegheny River in Armstrong County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Beaver Falls Power Company

[Docket No. QF86-222-000]

On November 1, 1985, Beaver Falls Power Company (Applicant), of P.O. Box 498, Brudies Road, Brattleboro, Vermont 05301 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,000 kW hydroelectric facility (FERC Project No. 2823) is located in Lewis County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Beaver Falls Power Company

[Docket No. QF86-217-000]

On October 31, 1985, Beaver Falls Power Company (Applicant), of P.O. Box 498, Brudies Road, Brattleboro, Vermont 05301 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,400 kW hydroelectric facility (FERC Project No. 7642) is located in Lewis County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Brownville Power Company

[Docket No. QF86-220-000]

On November 1, 1985, Brownville Power Company (Applicant), of P.O. Box 498, Brudies Road, Brattleboro, Vermont 05301 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9,000 kW hydroelectric facility (FERC Project No. 4939-001 is located in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Coffeeville Hydroelectric Partners

[Docket No. QF86-165-000]

On October 31, 1985, Coffeeville Hydroelectric Partners (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 20 megawatt hydroelectric facility will be located at the Coffeeville Lock and Dam on the Tombigbee River between Clarke and Choctaw Counties, Alabama.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Ford Motor Company

[Docket no. QF86-78-000]

On October 25, 1985, Ford Motor Company (Applicant), of The American Road, Dearborn, Michigan 48121-1899, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Washtenaw County, Michigan. It will consist of a combustion turbine-generating unit with a supplementary fired heat recovery steam generator. The primary energy source of the facility will be natural gas. The electric power production capacity of the facility will be 3.575 MW. The installation of the facility began in June 1985.

8. Gilead Power Company

[Docket No. QF86-174-000

On November 1, 1985, Gilead Power Company (Applicant), of P.O. Box 1414, 1600 South West 4th Avenue, Portland, Oregon 97201 (c/o Boise Cascade Corp.) submitted for filing an application for

certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4,800 kW hydroelectric facility (P. 7913) is located in Oxford County, Maine and Coos County, New Hampshire.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. The Grisdale Hill Company

[Docket No. QF86-163-000]

On October 31, 1985, The Grisdale Hill Company (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15 megawatt hydroelectric facility will be located at the Gibson Dam on the border of Teton, and Lewis and Clark Counties, Montana.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

10. Hydro Corporation of Pennsylvania

[Docket No. QF86-171-000]

On October 31, 1985, Hydro Corporation of Pennsylvania (Applicant), of 28650 Grand River Avenue, Farmington Hills, Michigan 48024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,600 kW hydroelectric facility is located in Elk County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Missisquoi Associates

[Docket No. QF86-219-000]

On November 1, 1985, Missisquoi Associates (Applicant), of P.O. Box 498, Brudies Road, Brattleboro, Vermont 05301 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 24,965 kW hydroelectric facility (FERC Project no. 7186-001) is located in Franklin County, Vermont.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

12. Roseburg Lumber Company

[Docket No. QF86-103-000]

On October 30, 1985, Roseburg Lumber Company (Applicant), of P.O. Box 697, Anderson, California 96007 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7 MW hydroelectric facility (P. 5931) is located in Shasta County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

13. Sandy Hollow Hydro Associates

[Docket No. QF86-181-000]

On November 1, 1985, Sandy Hollow Hydro Associates (Applicant), of 25 Canterbury Road, Rochester, New York 14607 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 525 kW hydroelectric facility (P. 5728) is located in Jefferson County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. Ultrapower, Inc.

[Docket No. QF86-149-000]

On October 30, 1985, Ultrapower, Inc. (Applicant), of 16845 Von Karman Avenue, Irvine, California 92714 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California and will consist of a steam turbine generator unit and a boiler. The net electric power production capacity will be 30 MW. The primary source of energy will be waste in the form of petroleum coke.

15. United States Power Corporation

[Docket No. QF86-72-000]

On October 23, 1985, United States Power Corporation (Applicant), of 2285

Schoenersville Road, Suite 207, Bethlehem, Pennsylvania 18017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility consists of a vessel moored in the Delaware River, utilizing river current to push paddle wheels extended from each side of the vessel. The paddle wheels are connected to a central shaft. As the paddle wheels turn, mechanical energy is produced which is converted into electrical energy via an alternator (or generator). The maximum electric power production capacity of the facility will be 60 kilowatts.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

16. Waste Management, Inc.

[Docket No. QF86-288-000]

On November 1, 1985, Waste Management, Inc. (Applicant), 3003 Butterfield Road, Oak Brook, Illinois 60521, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 9708 Giles Road, Manor, Texas. The primary energy source will be biomass in the form of biomethane from a sanitary landfill. The biomethane will be burned in a combustion turbine. The electric power production capacity of the facility will be 3 megawatts.

17. Waste Management, Inc.

[Docket No. QF86-287-000]

On November 1, 1985, Waste Management, Inc. (Applicant), 3003 Butterfield Road, Oak Brook, Illinois 60521, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 9500 Laurel Bowie Road, Bowie, Maryland. The primary energy source will be biomass in the form of biomethane from a sanitary landfill. The biomethane will be burned in a combustion turbine. The electric power production capacity of the facility will be 3 megawatts.

18. Waste Management, Inc.

[Docket No. QF86-286-000]

On November 1, 1985, Waste Management, Inc. (Applicant), 3003 Butterfield Road, Oak Brook, Illinois 60521, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located adjacent to 2700 N.W. 48th Street, Pompano Beach, Broward County, Florida. The facility will utilize mass combustion technology to burn municipal solid waste as the primary energy source. The electric power production capacity of the facility is 55 megawatts.

19. Waste Management, Inc.

[Docket No. QF86-278-000]

On November 1, 1985, Waste Management, Inc. (Applicant), 3003 Butterfield Road, Oak Brook, Illinois 60521, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Railroad Street, Lewisville, Texas. The primary energy source will be biomass in the form of biomethane from a sanitary landfill. The biomethane will be burned in a combustion turbine. The electric power production capacity of the facility will be 3 megawatts.

20. White Chuck Water Company

[Docket No. QF86-164-000]

On October 31, 1985, White Chuck Water Company (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7.5 megawatt hydroelectric facility will be located in Snohomish County, Washington.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

21. Independence Electric Corporation

[Docket No. QF86-130-000 et al.] (see attached list)

On October 31, 1985, Independence Electric Corporation (Applicant), of 919 18th Street, NW., Washington, D.C. 20006 submitted for filing five (5) applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Each of the hydroelectric small power production facilities location, water resources, FERC project number and power production capacity are listed below.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Docket No.	Location	Resources	FERC Project number	Capacity (Megawatt)
QF86-130-000	Greene County, Alabama	Black Warrior River and Lake	P. 8466	6
QF86-131-000	City of Jackson, Mississippi	Pearl River and Ross Barnett Reservoir	P. 7895	9.5
QF86-132-000	Clarke and Choctaw Counties, Alabama	Tombigbee River	P. 8813	26
QF86-133-000	Greene and Sumter Counties, Alabama	Tombigbee River	P. 8812	24
QF86-134-000	Pickens County, Alabama	Tombigbee River	P. 8435	20

22. Utility Systems Corp.

[Docket No. QF86-235-000 *et al.*] (see attached list)

Between October 30 and November 1, 1985, Utility Systems Corp. (Applicant), of 135 Haven Avenue, Port Washington, New York 11050 submitted for filing 15 applications for certification of facilities as qualifying cogeneration facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that any of the submittals constitutes a complete filing.

The docket numbers, filing dates, locations, primary energy sources and electric power production capacities of the 15 topping cycle cogeneration facilities are listed below. Each facility will consist of 1 or 2 Cogenic Energy Modules fueled by natural gas or diesel fuel as indicated. Waste heat is recovered from both jacket water and exhaust gases to produce hot water and/or steam to be used for space heating, domestic hot water, absorption air conditioning, process use, and any combination of the above.

Docket No.	Filing date	Location	Primary energy source	Electric power production capacity (kilowatts)
QF86-235-000	10/30/85	Port Chester, New York	Natural gas and No. 2 fuel oil	600
QF86-236-000	10/30/85	Elmsford, New York	Natural gas and No. 2 fuel oil	575
QF86-237-000	10/31/85	Jamaica, New York	Natural gas	420
QF86-238-000	10/31/85	Canton, Massachusetts	Natural gas	119
QF86-239-000	10/31/85	Greenlawn, New York	No. 2 fuel oil	456
QF86-240-000	10/31/85	Rye Brook, New York	Natural gas and No. 2 fuel oil	500
QF86-241-000	10/31/85	Bronxville, New York	Natural gas	555
QF86-243-000	11/1/85	Yorktown, New York	No. 2 fuel oil	102
QF86-244-000	11/1/85	Staten Island, New York	Natural gas and No. 2 fuel oil	236
QF86-247-000	11/1/85	Huntington, New York	Natural gas	300
QF86-248-000	11/1/85	Taunton, Massachusetts	Natural gas	200
QF86-249-000	11/1/85	Rye Brook, New York	No. 2 fuel oil	500
QF86-251-000	11/1/85	Yonkers, New York	No. 2 fuel oil	120
QF86-252-000	11/1/85	New Bedford, Massachusetts	Natural gas and No. 2 fuel oil	600
QF86-253-000	11/1/85	Needham Heights, Massachusetts	Natural gas	400

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27939 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-108-000]

Natural Gas Pipeline Co of America; Application

November 19, 1985.

Take notice that on October 31, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-108-000 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to a maximum of 35 billion Btu of natural gas per day on an interruptible basis for United States Steel Corporation (U.S. Steel) and for permission and approval to abandon of such service on August 31, 1987, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it proposes to provide an interruptible transportation service for U.S. Steel from the date certificate authority acceptable to Applicant is received through August 31, 1987. Applicant would provide such service pursuant to the terms and conditions contained in an agreement, dated May 6, 1985.

Applicant proposes to transport natural gas on behalf of U.S. Steel, an industrial end-user. The proposed end use of the gas is as fuel in the production of steel in U.S. Steel's Gary Works located in Gary, Indiana.

It is stated that gas for U.S. Steel's account would be delivered to Applicant at existing points of interconnection between the facilities of Applicant and 1) Oklahoma Natural Gas Company located in Custer and Woodward Counties, Oklahoma, 2) Kaiser Francis Oil Company in Caddo County, Oklahoma, 3) M.V. Pipeline Company in Caddo County, Oklahoma and 4) Mustang Fuel Corporation in Washita County, Oklahoma. It is further stated that Applicant would redeliver thermally equivalent volumes for U.S. Steel's account to Northern Indiana Public Service Company at the outlet flange of the Lansing No. 3 meter station located on the border of Cook County, Illinois, and Lake County, Indiana.

Applicant proposes to charge U.S. Steel 27.9 cents per million Btu for gas

received in Caddo County, Oklahoma, 27.2 cents per million Btu for volumes received in Custer and Woodward Counties, Oklahoma; and 28.2 cents per million Btu for volumes received in Washita County, Oklahoma. In addition, Applicant would charge U.S. Steel for fuel used and lost and unaccounted—for gas under the Agreement. Applicant also proposes to charge U.S. Steel the currently effective GRI surcharge.

Applicant states that no new facilities would be required for this service. Applicant requests authorization to add additional receipt points in the future that may be necessary to support this service.

Applicant states that it provided similar transportation service commencing on September 1, 1985, pursuant to Section 157.209(e)(1) of the Commission's Regulations. Applicant states that such service would terminate on October 31, 1985, because of the expiration of Commission Order 234–B on that date.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1985, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28069 Filed 11–22–85; 8:45 am]

BILING CODE 6717-01-M

[Docket No. SA85–53–000]

Southern California Gas Co.; Petition for Exemption From Incremental Pricing

Issued: November 20, 1985.

On September 30, 1985, Southern California Gas Company (SoCal) filed a petition with the Commission pursuant to section 206(d) of the Natural Gas Policy Act of 1978. 15 U.S.C. 3346(d) (1982). SoCal requests that the Commission exempt from incremental pricing all of SoCal's sales to enhanced oil recovery (EOR) customers under any present or future rate schedule, except rate schedule GN–7 which is already exempt,[1] that the California Public Utility Commission (CPUC) finds will yield a positive margin contribution. SoCal defines a margin contribution as the cost of gas to EOR customers less the cost of gas SoCal purchased to serve those customers.

SoCal states the incremental pricing regulations artifically constrain its present and potential natural gas sales to the EOR market. SoCal deems potential natural gas sales to include sales which would take place as a result of the CPUC implementing certain proposed regulations. In its regulatory proceeding, CPUC is considering whether to allow or to require SoCal and its competitors, such as Pacific Gas and Electric Company (PG&E), to operate under additional rate schedules designed to serve the EOR market on a long-term basis. SoCal relates that PG&E has also filed a petition, in Docket No. SA85–51–000,[2] seeking an exemption for any rate schedule through which it may be authorized to sell natural gas to EOR customers. The Commission has not yet acted on PG&E's petition. SoCal requests the Commission treat PG&E and SoCal equally since the two firms have adjoining service territories for the present and potential EOR market in the will San Joaquin Valley. SoCal seeks assurance that the Commission will not allow either PG&E or SoCal a compeititve advantage through its orders in any "open" service territory. SoCal also states that it requires the petitioned-for relief in order to compete effectively with other interstate pipelines proposed to be constructed to serve the EOR market.[3] These proposed pipelines may offer transportation services, in addition to or in lieu of sales, to which incremental pricing surcharges do not apply.

SoCal maintains the requested relief would help avoid hardship, inequity and an unfair distribution of burdens on SoCal's high priority customers should the CPUC's proposed regulations be issued in final form. SoCal states its requested relief would help avoid price increases to SoCal's high priority customers by the additional margin contribution generated from additional EOR sales. SoCal also states increased sales to EOR customers wuold not impair service to SoCal's high priority customers since EOR customers have the lowest priority of service under SoCal's curtailment policy filed with the CPUC. SoCal contends the open-ended nature of the requested exemption would reduce the number of future rate schedule filings and modifications. SoCal also contends the environment would benefit by lower NOX and SOX emissions with EOR customers using natural gas in lieu of crude oil.

SoCal requests expedited consideration of its petition. SoCal maintains that expedition is necessary so its gas sales may be made as authorized by the CPUC. SoCal also maintains that expedited consideration is necessary to prevent the loss of potential EOR customers resulting from their procurement of alternative long-term supplies.

The procedures applicable to the conduct of this proceeding are set forth in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene in accordance with Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28067 Filed 11–22–85; 8:45 am]

BILLING CODE 6717-01-M

---

[1] Docket No. SA85–05–000, 30 FERC ¶62,138 (1985).

[2] SoCal's petition incorrectly cited PG&E's petition as Docket No. GP85–51–000.

[3] Kern River Gas Transmission Company, Docket No. CP85–552–000; Mojave Pipeline Company, Docket No. CP85–437–000.

[Docket No. TC86-3-000]

Texas Eastern Transmission Corp.; Tariff Filing

November 19, 1985.

Take notice that on November 1, 1985, Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, Houston, Texas 77010, tendered for filing in Docket No. TC86-3-000 pursuant to Part 154 of the Commission's Regulations the following revised tariff sheets as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to become effective November 1, 1985:

Ninth Revised Sheet No. 102B
Third Revised Sheet No. 102C

Texas Eastern states that the tariff sheets reflect a change in the procedures which it would follow in interrupting or curtailing interruptible transportation service provided by Texas Eastern under its Rate Schedule TS-3. Pursuant to the proposed procedure, Texas Eastern states that all Shippers under Rate Schedule TS-3, whether customers of Texas Eastern under its gas sales tariff or noncustomers, would be subject to interruption or curtailment in a manner which is neither discriminatory nor preferential. Texas Eastern proposes to allocate capacity available for interruptible transportation under Rate Schedule TS-3 based upon the ratio which each TS-3 Shipper's maximum daily transportation quantity (MDTQ) bears to the total MDTQ off all such TS-3 Shippers. It is stated that these tariff sheets reflect a change from Texas Eastern's prior procedure of allocating capacity available for transportation under Rate Schedule TS-3 first to sales customers of Texas Eastern and then, only after meeting their requests, to other customers.

Texas Eastern submits that the proposed tariff sheets comply with the Commission requirement set forth in Section 284.9(b) of the Regulations regarding non-discriminatory access to self-implementing interruptible transportation. Such regulation became effective pursuant to Order No. 436 on November 1, 1985.

Applicant requests that the Commission waive all necessary Rules and Regulations so as to permit the subject tariff sheets to be effective as of November 1, 1985.

Any person desiring to be heard or to make any protest with reference to said tariff sheeet filing should on or before November 27, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28068 Filed 11-22-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2928-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Household Survey of Exposure to Consumer Products Containing Methylene Chloride and Substitutes (EPA ICR #1271). (This is a new survey.)

Abstract: Information on consumer usage of household products containing methylene chloride is necessary to perform exposure assessments for consumers using these chemicals. The exposure assessments will then be factored into the calculation of risk for these solvents.

Respondents: Four thousand consumers using household products containing methylene chloride.

Agency PRA Clearance Requests Completed by OMB

EPA #1169; Delisting of Hazardous Waste, was approved 11/1/85 (OMB #2050-0053; expires 10/31/88).

EPA #1269; TSCA Section 8(c) Rule Evaluation Pilot Study, was approved 11/5/85 (OMB #2070-0076; expires 3/31/86).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: November 18, 1935.

Daniel J. Fiorino,

Acting Director, Regulation and Information Division.

[FR Doc. 85-27900 Filed 11-22-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2928-3]

Management Advisory Group to the EPA Construction Grant Program; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one and a half day meeting of the Management Advisory Group to the EPA Construction Grant Program (MAG), will be held on December 12-13, 1985, in Albuquerque, NM at the La Posada de Albuquerque Hotel, 125 Second Street NW., from 9:00 a.m. to 5 p.m. on December 12, and 8 a.m. to 12 noon on December 13.

The principal agenda item will be work on a draft MAG report on compliance and operation and maintenance of publicly owned wastewater treatment works, specifically on recommendations to be made by MAG. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. For additional information, telephone or write to Georgette Brown at EPA, WH-547, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382-5859.

Dated: November 13, 1985.

Lawrence J. Jensen,

Assistant Administrator, Office of Water (WH-556).

William B. Hedeman,

Acting Assistant Administrator, Office of Water (WH-556).

[FR Doc. 85-28036 Filed 11-22-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.
Title: Local Level Civil Rights Compliance Checklist.
Abstract: Needed to assess compliance with civil-rights statutes. Covers: warning and communications; evacuation and shelter; and emergency operating centers. Will provide inventory of accomplishments and deficiencies, enabling FEMA to offer technical assistance where appropriate.
Type of Respondents: State or Local Governments.
Number of Respondents: 900.
Burden Hours: 1,800.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: November 15, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-27986 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-752-DR]

Louisiana; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-752-DR), dated November 1, 1985, and related determinations.

DATED: November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Louisiana, dated November 1, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1985: Jefferson, Lafourche, Terrebonne, St. Bernard, St. Charles, and St. John the Baptist Parishes for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27987 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-751-DR]

Massachusetts; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA-751-DR), dated October 28, 1985, and released determinations.

DATED: November 19, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Massachusetts, dated October 28, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 28, 1985:

Essex, Franklin, Hampden, Hampshire, Suffolk, and Worcester Counties for Public Assistance.
The Towns of Bourne, Falmouth, and Mashpee in Barnstable County for Public Assistance.
The Towns of Becket, Hinsdale, Monterey, New Marlborough, Otis, and Sandisfield in Berkshire County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27988 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-754-DR]

Pennsylvania; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA-754-DR), dated November 9, 1985, and related determinations.

DATED: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Pennsylvania, dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

The Counties of Fayette and Washington for Public Assistance.
The Political Subdivisions of:
Dravosburg Borough in Allegheny County; West Elizabeth Sanitation Authority in Allegheny County; Carmichael Municipal Water Authority in Greene County; Greensboro in Greene County; Rice's Landing in Greene County; and Meyersdale Borough in Somerset County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27989 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-746-DR]

Puerto Rico; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-746-DR), dated October 10, 1985, and related determinations.

DATED: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616..

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated October 10, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 10, 1985: The Municipalities of Cidra and Rio Granda for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27990 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATED: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Virginia, dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

The Counties of Albemarle, Amherst, Augusta, Bath, Craig, Highland, Franklin, Madison, Montgomery, Nelson, Page, Rockingham, Shenandoah, and Warren for Public Assistance.

The Cities of Lynchburg and Waynesboro for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27992 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATED: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assiatance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Virginia, dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

The Counties of Essex, Goochland, Henrico, and Middlesex for Individual Assistance.

Hampton City and Lexington City for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27993 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATED: November 14, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Virginia, dated November 9, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985: Lancaster County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27994 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATE: November 16, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Virginia dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Chesterfield, King George, Surry and York Counties and Poquoson City for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27995 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATED: November 14, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Virginia, dated November 9, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Gloucester, Powhatan, and Westmoreland Counties for Public Assistance.

Harrisonburg City and Richmond City for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27996 Filed 11-22-85; 8:45 am]

BILLING CODE 6710-02-M

[FEMA-755-DR]

Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Virginia (FEMA-755-DR), dated November 9, 1985, and related determinations.

DATED: November 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.F. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Virginia, dated November 9, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985: Mathews County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.))

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27997 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-753-DR]

West Virginia; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA-753-DR), dated November 7, 1985, and related determinations.

DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of West Virginia, dated November 7, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 7, 1985:

Barbour, Braxton, Calhoun, Doddridge, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jefferson, Lewis, Marion, Mineral, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pocahontas, Preston, Randolph, Summers, Taylor, Tucker, Tyler, Upshur, and Webster Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-27991 Filed 11-22-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

First Pennsylvania Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Pennsylvania Corporation*, Philadelphia, Pennsylvania; to engage *de novo* through First Pennsylvania Investments Company, Philadelphia, Pennsylvania, in the activity of buying and selling securities, solely as agent for the account of customers and does not include securities underwriting or dealing or investment advice or research

services, related securities credit activities pursuant to Regulation T and incidental activities such as offering custodial services, individual retirement accounts and cash management services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222.

1. *Commercial National Corporation*, Shreveport, Louisiana, to engage *de novo* through Linc Switch, Inc., Baton Rouge, Louisiana, in a regional electronic funds transfer network for interchanging financial transactions between and among participating depository institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27969 Filed 11-22-85; 8:45 am]

BILLING CODE 6210-01-M

Calumet National Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 US.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 13, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Calumet National Corporation*, Hammond, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Calumet National Bank, Hammond, Indiana.

Board of Governors of the Federal Reserve System, November 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27970 Filed 11-22-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement and Notice of Availability of Funds for Fiscal Years 1986 and 1987

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces that competitive cooperative agreement applications are being accepted for Development of National Prevention Strategies on Leading Work-Related Diseases and Injuries. The Catalog of Federal Domestic Assistance number is 13.262.

Program Objective

The purpose of this cooperative agreement is to provide assistance for the development and dissemination of proposed prevention strategies for the prevention of disorders of reproduction, neurotoxic disorders, noise-induced loss of hearing, dermatologic conditions, and psychologic disorders.

Type of Assistance

The award resulting from this announcement will be a Cooperative Agreement. Cooperative activities of the recipient are:

1. Collaborate in the development of "draft" prevention strategies on disorders of reproduction, neurotoxic disorders, noise-induced loss of hearing, dermatologic conditions, and psychologic disorders to be presented at a national conference and to revise these strategies to include conference input and recommendations. All draft strategies require the approval of NIOSH and the Grants Management Officer prior to release at the national conference.

2. Plan for the development of a conference on the five national prevention strategies by:

a. Setting objectives for the conference.

b. Selecting dates and place of national conference.

c. Developing a tentative agenda for the conference.

d. Developing a plan for publication and dissemination of the prevention strategies.

3. Conduct the following pre-conference activities:

a. Developing a mailing list of potential participants.

b. Inviting conference participants.

c. Determining and inviting expert panelists to serve on the faculty for each workshop.

d. Selecting and inviting speakers.

e. Developing final agenda for the conference.

f. Developing and sending invitations and announcements.

g. Developing and printing final program.

h. Arranging for audio visual, typing, copying, and editorial services.

i. Making travel and hotel arrangements for expert panelists to serve on the faculty for each workshop.

4. Conduct the conference with responsibility for:

a. Organizing the registration/information process.

b. Providing liaison with the hotel such as negotiating for rooms (sleeping and meeting), scheduling of events, and exhibit space.

c. Providing typing, copying, and editorial services.

d. Publishing and disseminating proposed national prevention strategies for disorders of reproduction, neurotoxic disorders, noise-induced loss of hearing, dermatologic conditions, and psychologic disorders within 6 months after the conference.

Cooperative activities of CDC/NIOSH are:

1. Collaborate in the development of "draft" prevention strategies on disorders of reproduction, neurotoxic disorders, noise-induced loss of hearing, dermatologic conditions, and psychologic disorders to be presented at a national conference and to revise these strategies to include conference input and recommendations.

2. Collaborate with recipient, who has the responsibility for the conference, in order to assure that the purpose of the conference is carried out on the following:

a. Development of objectives.

b. Development of a tentative agenda.

c. Selection of date and location.

d. Selection of speakers for plenary sessions.

e. Selection of chairpersons for the expert panels.

f. Development of a plan for publication and dissemination of proposed prevention strategies on

disorders of reproduction, neurotoxic disorders, noise-induced loss of hearing, dermatologic conditions, and psychologic disorders.

Availability of Funds

It is expected that approximately $105,000 be available in Fiscal Year 1986 and $120,000 in Fiscal Year 1987 to fund one award. The award will be funded with 12-month annual budget periods with a 2-year project period. The funding estimate outlined above may vary and is subject to change.

Authority

Program regulations applicable to this Cooperative Agreement are set forth in Section 20(a)(1) and Section 22(e)(7) of the Occupational Safety and Health Act of 1970 (PL 91-596), and Title 31 U.S.C. 6301 and 6305.

Eligibility Requirements

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses are eligible for this cooperative agreement. For-profit organizations will be required to submit a certification as to their status as part of their application.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161-1 (revised 3-79) on or before January 24, 1986, to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in your business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date.

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and are not subject to review under regulations (42 CFR Part 122, as amended, and part 123) implementing the National Health Planning and Resources Development Act of 1974.

5. Content and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual Chapter PHS 1-507, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of applications. The information provided should be consistent with the following evaluation criteria:

a. The applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

b. The applicant's working relationships with practitioners of occupational safety and health (industrial hygiene, medicine, nursing, safety, and health promotion), and public health in Federal, State, and local governments; schools of occupational safety and health; schools of public health; business and professional associations; trade unions; voluntary organizations; and other national and international organizations. The following documentation is required of applicant:

(1) Previous experience in dealing with the above organizations and groups.

(2) Professional competence in the fields of public health and occupational safety and health especially as it relates to prevention.

(3) Communication networks in the fields of public health and occupational safety and health.

(4) Previous history in the conduct of national conferences.

(5) Experience in publications and dissemination of products.

c. The applicant's plan to secure the highest qualified individuals to serve on conference panels.

d. The applicant's contribution in terms of staff, time, other financial resources, and ability to obtain financial support for the project other than this cooperative agreement.

e. The ability of the applicant to provide the staff, knowledge, and other resources required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities including the following:

(1) The specific steps to be taken in planning and implementing this project and the respective responsibilities of the applicant, CDC, and any other entities for carrying out those steps.

(2) A proposed schedule for accomplishing each of the activities to be carried out in this project.

(3) The qualifications and time allocations of the professional staff, the support staff, and the facilities, space, and equipment available for performance of this project.

(4) The proposed plan for administering this project, and the name, qualifications, and time allocations of the Project Director.

(5) The budget which should include (a) anticipated costs for personnel, publications, travel, communications and postage, equipment, and supplies, and (b) the sources of funds to meet those needs (both cooperative agreement and other funds).

Recipient Financial Participation

The recipients under this program will be required to cost-share this project.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Room 321, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, GA 30305, Telephone: 404/262-6575 or FTS 236-6575.

Technical assistance may be obtained from Roger Turenne, Chief, Evaluation and Control Branch, Office of Program Planning and Evaluation, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta Georgia 30333, Telephone: 404/329-3794 or FTS 236-3794.

Dated: November 19, 1985.

L. W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 85-28000 Filed 11-22-85; 8:45 am]

BILLING CODE 4160-19-M

NIOSH Board of Scientific Counselors; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational

Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors.
Date: December 10–11, 1985.
Place: Auditorium B, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.
Time and Type of Meeting: Closed 9:00 a.m.–10:30 a.m., December 10, 1985. Open 10:30 a.m.–4:30 p.m., December 10, 1985. Open 9:00 a.m.–12:30 p.m., December 11, 1985.
Contact Person: Elliott S. Harris, Ph.D., Executive Secretary, NIOSH Board of Scientific Counselors, NIOSH, ODC, Building 1, Room 3007, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329–3773.
Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research as related to the Institute's goals.
Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, report of the Subcommittee on Worker Notification, site visit reports, and future meeting dates. Beginning at 9:00 a.m. through 10:30 a.m., December 10, site visit teams will discuss their review and evaluation of NIOSH intramural programs and projects conducted by NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson, and as time permits, appropriate questions will be asked of the speakers.

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: November 19, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–27999 Filed 11–22–85; 8:45 am]

BILLING CODE 4160–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Scoping Announcement and Intent To Prepare an Environmental Assessment, Red Lodge, MT

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Public Scoping meeting to assist in preparing an environmental assessment (EA) for a proposed wildcat oil and gas exploration well near Red Lodge in Carbon County, Montana.

SUMMARY: This notice describes the action to be analyzed in the EA, the area that would most likely be affected; preliminary issues, concerns and opportunities; the scoping process to be used; and the locations where further information may be obtained.

DATE: A Scoping Meeting will be held in Red Lodge, Montana on December 12, 1985, in the high school cafeteria at 7 p.m. to obtain input from the public on issues and concerns and the scope of the EA.

FOR FURTHER INFORMATION CONTACT: Information and materials providing a description of the project are available for review at the following locations:

Bureau of Land Management, Miles City District Office, P.O. Box 940, Garryowen Road, West of Miles City, Miles City, Montana 59301
Bureau of Land Management, Billings Resource Area Office, 810 Main Street, Billings, Montana 59105
Beartooth Ranger District, Custer National Forest, Route 2, Box 3420, Red Lodge, Montana 59068

Copies of the Scoping Information can be obtained by writing to the following address: Bureau of Land Management, Miles City District Office, Attn: James Murkin, Asst. District Mgr., Div. of Mineral Resources, P.O. Box 940, (Garryowen Road), Miles City, Montana 59301–0940.

Written comments should be submitted to this address. In order to be considered in determining the scope of the EA, written comments must be received by December 27, 1985.

SUPPLEMENTARY INFORMATION: Amoco Production has filed an Application for Permit to Drill (APD) an exploratory oil and gas well. The BLM has determined that an EA should be prepared to address the environmental impacts of the proposed project. The action to be analyzed in the EA consists of construction of a drilling pad, reserve pit, and related facilities to support drilling an exploratory oil and gas well.

Geographic Area

The proposed oil and gas exploration well will be on private land near Highway 212 approximately 5½ miles south of Red Lodge, Montana. The site is adjacent to the Custer National Forest and Amoco plans to drill directionally onto a federal lease inside the forest boundary.

Issues, Concerns, and Opportunities

A public information meeting was held in Red Lodge on November 7, 1985, and some of the important issues, concerns and opportunities which have been identified to date include:

1. Potential effects of the drilling activities on the Silver Run elk herd which has a winter range in the area.

2. Safety concerns associated with preventing a sour gas blowout, and adequacy of a hydrogen sulfide contingency plan. In addition, the effects of the contingency plan on the local area was a concern.

3. Potential effects of transportation of equipment to and from the site.

4. Preservation of water quality in Rock Creek. There is a concern on how the drilling operation may affect the quantity and quality of Rock Creek.

5. Potential effects of drilling on noise levels.

6. Potential effects of drilling on recreational activities. If drilling is conducted during the tourist season, will the activities affect the quality of recreation experience?

7. Potential visual impact associated with drilling operations.

The public is encouraged to present their ideas at the scoping meeting. All issues, concerns and opportunities will be considered in the preparation of the EA.

Ray Brubaker,

District Manager.

[FR Doc. 85–28019 Filed 11–22–85; 8:45 am]

BILLING CODE 4310–DN–M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S. C. App. 1 § 10), that a meeting of the Cape Cod National Seashore Advisory

Commission will be held Friday, December 13, 1985.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The meeting will convene at Park Headquarters at 1:30 p.m. to discuss:

1. Advisory Commission Renewal.
2. ORV Limited Access Pass.
3. Status of Province Lands Dune Cottages.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663. Telephone: (617) 349–3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Dated: November 15, 1985.

Herbert Olsen,

Superintendent Cape Cod National Seashore.

[FR Doc. 85–28030 Filed 11–22–85; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held on Thursday, December 19, 1985, at 1:00 p.m., at the National Capital Region Headquarters, 1100 Ohio Drive, S.W., Room 234, Washington, DC.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

William Penn Mott, Chairman, Director, National Park Service, Washington, DC,

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC;

George H. White, Architect of the Capital, Washington, DC;

Honorable Armistead J. Maupin, Acting Chairman, American Battle Monuments Commission, Washington, DC;

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC;

Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC;

L. L. Mitchell, Commissioner, Public Buildings Service, Washington, DC.

The purpose of the meeting will be to review and amend, if necessary, its criteria and guidelines concerning memorialization to historic figures; foreign donated memorials; provisions that planning, design, and construction costs of all memorials be borne entirely by non-Federal entities; and that the cost to the Federal Government for the operation and maintenance of mounments or memorials be partially offset by non-Federal funds; commemorative plaques; recognition of donors' participation and/or contributions to the funding of memorials; and any old or new business brought before the Committee. Also, the Committee will review a proposal to name a park in the District of Columbia in honor of Julius Hobson.

Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at 202–426–7750. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of Land Use Coordination, National Capital Region, Room 206, 1100 Ohio Drive, SW., Washington, DC, 20242.

Dated: November 18, 1985.

Albert J. Benjamin,

Acting Regional Director, National Capital Region.

[FR Doc. 85–28031 Filed 11–22–85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub–99X)

Southern Pacific Transportation Co.; Abandonment Exemption; in Matagorda County, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 31.12-mile line of railroad between milepost 37.00 near Bay City and milepost 68.12 near Palacios, in Matagorda County, TX.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective December 25, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by December 5, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 6, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gray A. Laakso, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 13, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–28037 Filed 11–12–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-30]

Clifton Orson Timanus, D.D.S.; Denial of Application

On July 30, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an order to show cause to Clifton Orson Timanus, D.D.S. of 3701 East End Drive, Humboldt, Tennessee 38343 (Respondent) proposing to deny his application, executed on August 17, 1983, for registration with DEA as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's conviction of three counts of illegal prescribing of controlled substances in violation of T.C.A. 52-1435, felony offenses relating to controlled substances. By letter dated August 9, 1984, Respondent requested a hearing on the issues raised by the order to show cause.

A hearing in this matter was held in Nashville, Tennessee on March 20, 1985. Administrative Law Judge Francis L. Young presided. Respondent appeared *pro se*. On August 29, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, and decision. On September 18, 1985, the Government filed exceptions to Judge Young's opinion, and on September 24, 1985, Judge Young transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered this record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that, between December, 1979, and January, 1981, the Respondent wrote a large number of Demerol prescriptions for Robert Hardwick, a personal friend of Respondent who Respondent knew was addicted to Demerol. Respondent wrote these Demerol prescriptions for Hardwick in the names of persons supplied by Hardwick, including the names of Hardwick's father and former patients of Dr. Timanus. Respondent admitted that he never saw the "patients" for whom he wrote the prescriptions, but only wrote them at the behest of Hardwick. The prescriptions were all intended for Hardwick and he received all of the Demerol. A total of 96 prescriptions written by Respondent for Hardwick's benefit were recovered from various pharmacies in the Humboldt area. Most of the prescriptions were between 12 and 15 tablets, with some for larger amounts.

Based on the aforementioned incidents, on July 12, 1981, Respondent was convicted after a plea of guilty by the Law Court of Humboldt, Tennessee of violation of TCA 52-1435. The charges of which Respondent was convicted are felony offenses. Therefore, there is a lawful basis for denying Respondent's application for registration. 21 U.S.C. 824(a)(2). The Administrator adopts the foregoing findings of fact and the conclusion of law.

The Administrative Law Judge found that the overall tenor of the evidence as a whole is to the effect that Respondent wrote these prescriptions primarily out of friendship. There is no evidence in the record that Respondent ever wrote illegal prescriptions for anyone other than his friend Hardwick. Judge Young found no malice in what Respondent did and concluded that there was no evidence of a "really corrupt" motive.

Judge Young found that Respondent's practice in the small town of Humboldt, Tennessee dwindled away as a result of the adverse publicity regarding his arrest and conviction, and that Respondent is in need of a DEA registration in order to establish a new dental practice in Memphis.

Having observed the Respondent at the hearing, the Administrative Law Judge was impressed with his candor and sincerity. Judge Young concluded that, while there is a legal basis for denying Respondent's application, it is highly unlikely that Respondent will again violate the law concerning controlled substances. The Administrative Law Judge, therefore, recommended that Respondent be granted registration in Schedules III, IV and V to assist Respondent in his efforts to establish a new practice.

The Administrator does not accept the recommendation of the Administrative Law Judge. The facts outlined in the judge's opinion clearly show that the Respondent was furnishing his friend Hardwick with prescriptions for the Schedule II narcotic drug Demerol for more than a year. He wrote these prescriptions in the names of individuals furnished by Hardwick knowing that Hardwick was a Demerol addict. The record indicates that Hardwick, who was in the air conditioning business, installed air conditioning units in Dr. Timanus' office and home and worked on the units when necessary. Hardwick was paid for this work in part by Dr. Timanus through the furnishing of Demerol prescriptions. Such activity, even though committed "without malice", still constitutes illegal prescribing of controlled substances and clearly indicates a lack of responsibility in the handling of controlled substances. Here, the public interest is best served by preventing the irresponsible prescribing of controlled substances rather than by assisting Dr. Timanus in establishing a new practice. The Administrator, therefore, finds that the application for registration executed by the Respondent, Dr. Timanus should be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Clifton Orson Timanus, D.D.S. executed on August 17, 1983, and any other applications for registration under the Controlled Substances Act be, and are hereby, denied, effective December 26, 1985.

Dated: November 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-28024 Filed 11-22-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-13]

James C. Hamilton, O.D.; Denial of Application

On January 22, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to James C. Hamilton, O.D. of 4443 I-55 North, Jackson, Mississippi 39206 (Respondent), an order to show cause proposing to deny his application for a DEA Certificate of Registration, executed on April 17, 1983, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that Dr. Hamilton, an optometrist, is not authorized to utilize controlled substances under the laws of Mississippi, the State in which he practices his profession. Respondent requested a hearing on the issues raised by the order to show cause. Administrative Law Judge Francis L. Young held a prehearing conference with counsel for Respondent and for DEA, where it was agreed that an evidentiary hearing was not necessary as there were no factual issues to be resolved. Counsel for both sides submitted memoranda on the legal issues.

On August 15, 1985, Administrative Law Judge Francis L. Young, issued his opinion and recommended findings of fact, conclusions of law, ruling and

decision. On August 30, 1985, the Respondent filed exceptions to Judge Young's opinion. On September 17, 1985, the Administrative Law Judge transmitted the record of these proceedings, including Respondent's exceptions to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Dr. Hamilton is licensed to practice optometry in the State of Mississippi. Respondent seeks to use medicinal cocaine topically in attempting to diagnose certain conditions of the human eye. Under Mississippi State Code section 73–19–101, "[N]o person engaged in the practice of optometry in the State of Mississippi shall use pharmaceutical agents in the practice of optometry unless he has been certified to use diagnostic pharmaceutical agents . . ." To become certified by the state, the practitioner must pass a special examination. Judge Young found that there was no showing in the record that Respondent had been "certified" by the state to use diagnostic pharmaceutical agents. It is clear that, in the absence of certification, it cannot be said that, as 21 U.S.C. 823(f) requires, that Respondent is "authorized" to use pharmaceutical agents.

The Administrative Law Judge went further to address the remaining issue raised by both Respondent and DEA: "Assuming Respondent had been certified to use "diagnostic pharmaceutical agents" by the state, should he then be considered by DEA to have been authorized by the state to utilize controlled substances?" The state code provides that a registered optometrist may become "certified", and thus "authorized," to use "those pharmaceutical agents which, when applied topically to the eye, are utililzed in a prescribed manner." The Code further provides that the "pharmaceutical agents so authorized shall be limited to . . . anesthetics, mydriaticss, cycloplegics, dyes and over-the-counter drugs." The Code provides that such agents shall only be utilized in practice by the optometrist and shall not be dispensed to any patient.

Upon review of the statutory language, the Administrative Law Judge concluded that the language of the Mississippi statute is ambiguous and leaves unanswered the question of whether the legislature intended to authorize the use of such controlled substances as may be included within the specific types of "pharmaceutical agents." However, under the legal principle of comity, the Administrative Law Judge recognized an official interpretation of the relevant law given by the Mississippi Attorney General, who stated: "After careful examination, we are of the opinon that the legislature, by such authorization, did not authorize the use of controlled substances."

The Administrator adopts the Administrative Law Judge's findings of fact, conclusions of law and recommendations in their entirety.

Having concluded that there is a lawful basis for the denial of the Respondent's registration, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration executed on April 17, 1983, by James C. Hamilton, O.D., and any other applications executed by Respondent which may exist, be, and are hereby denied.

Dated: November 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85–28025 Filed 11–22–85; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Applied Science Laboratories; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 17, 1985, Applied Science Laboratories, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Dihydromorphine (9145)	I
D-iso-lysergic acid diethylamide (7307)	I
D-lysergic acid Methylpropylamide (7328)	I
Mescaline HCL (7387)	I
Cyclohexamine (PCE) HCL (7456)	I
1-phenylcyclohexylpyrrolidine HCL (7461)	I
Thiophene Analog of PCP (HCL salt) (7469)	I
Normophine HCL (9360)	I
1-phenylcyclohexylmaine (7460)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Morphine (9300)	II
Dihydrocodeine (9120)	II
Phencyclidine HCL (7472)	II
Codeine-6-glucuronide (9069)	II
Norcodeine HCL (9115)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
Ethylmorphine HCL (9191)	II
Dextropropoxyphene (9316)	II
6-Monoacetylmorphine (9316)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 26, 1985.

Dated: November 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–28026 Filed 11–22–85; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Eli Lilly Industries, Inc.; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR) this is notice that on August 28, 1985, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 26, 1985.

Dated: November 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-28027 Filed 11-22-85; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances, Philadelphia Seed Co.; Registration

By Notice dated September 24, 1985, and published in the **Federal Register** on October 1, 1985, (50 FR 40070), Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-28028 Filed 11-22-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances, Upjohn Co.; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 28, 1985, Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 26, 1985.

Dated: November 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-28029 Filed 11-22-85; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-53 and DPR-69 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

The amendments proposed by the licensee would change the Technical Specifications (TS) as follows: (1) TS 6.2.1 and 6.2.2, "Organization", would be changed via TS Figures 6.2-1 and 6.2-2 to reflect an extensive corporate reorganization; (2) the titles of a number of individuals, as reflected in TS Section 6.0, "Administrative Controls", would be changed as a result of the reorganization; and (3) TS 6.5.1, "Plant Operations and Safety Review Committee (POSRC)", would be changed to reflect the elimination of one member from the POSRC. These changes to the TS were proposed by the licensee in an application dated November 1, 1985.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed reorganization represents a significant change in the off-site and on-site organizational structure as reflected in TS 6.2.1 and 6.2.2, respectively. The Vice President-Supply and Vice President—Engineering and Construction positions would be eliminated. A new position of Vice President—Nuclear Energy would be created which would encompass the present responsibilities of the above two eliminated positions with respect to BG&E's nuclear program. Reporting to the Vice President—Nuclear Energy would be four managers: Manager—Nuclear Operations [The Manager—Nuclear Operations would assume the current responsibilities of the Plant Superintendent with respect to nuclear safety]; Manager-Nuclear Engineering Services [The Manager—Nuclear Engineering Services would be established to consolidate all of the engineering support staff into a single department]; Manager—Quality Assurance and Staff Services [The Manager—Quality Assurance and Staff Services would assume the responsibilities of the present Manager—Quality Assurance with exception of the Quality Control function]; and Manager—Nuclear Maintenance [The Manager—Nuclear Maintenance would be responsible for the electrical instrument control, and mechanical maintenance/modification crafts and technicians and their associated quality control inspectors.]

The proposed reorganization would be expected to improve management at Calvert Cliffs by allowing key functions to report to a single BG&E Vice President while maintaining independent oversight. Since an equivalent or improved level of management would be maintained at Calvert Cliffs, no degradation in the maintenance or testing of safety-related equipment or structures would occur; thus, the proposed reorganization would not involve a significant increase in the probability or consequences of accidents previously evaluated or create the possibility of a new or different type of accident. Since no changes in plant design or operation are involved, no reduction in safety margins would occur. Accordingly, the Commission proposes to determine that the proposed changes

to TS 6.2.1 and 6.2.2 involve no significant hazards considerations.

Consistent with the proposed changes to TS 6.2.1 and 6.2.2, the licensee has proposed a number of changes to TS Section 6.0 to reflect changes in job titles. In all cases, the job function remains the same and only the title would change.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. One such example (i) involves "A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." "The proposed changes to Section 6.0 are administrative in nature in light of the proposed determinations concerning TS 6.2.1 and 6.2.2. Accordingly, the Commission proposes to determine that the proposed changes to Section 6.0, which would change position titles consistent with proposed changes to TS 6.2.1 and 6.2.2, involve no significant hazards considerations.

Finally, the licensee has proposed to eliminate one member from the POSRC as specified in TS 6.5.1. This committee provides a substantial degree of oversight concerning safety-related activities related to plant operation; TS 6.5.1.6 enumerates these responsibilities. At the present time, TS 6.5.1.2 requires that the POSRC be composed of eight members and a chairman. The licensee has proposed that the POSRC be composed of seven members and a chairman.

The proposed elimination of a POSRC member does not eliminate any technical discipline necessary to carry out the function of the POSRC or in any other way hamper the function of the POSRC. Since the POSRC will continue to maintain adequate oversight concerning activities that affect safety-related equipment or structures, change in POSRC membership would not involve a significant increase in the probability or consequences of accidents previously evaluated or create the possibility of a new or different type of accident. Finally, since no changes in plant design or operation are involved, no reduction in safety margins would occur. Accordingly, the Commission proposes to determine that the proposed change to TS 6.5.1.2, which eliminates one member from the POSRC, involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By December 26, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public

Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Edward J. Butcher: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James A. Biddison, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 1, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 18th day of November 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85–28092 Filed 11–22–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–414A]

Duke Power Co., North Carolina Municipal Power Agency 1, and Piedmont Power Agency; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 2 of the Catawba Nuclear Power Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Catawba 2 construction permit to the Duke Power Company, et al., the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in the Piedmont Carolinas, the events relevant to the Catawba 2 construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

The conclusion of the staff's analysis is as follows:

"During the construction permit antitrust reviews of Duke Power Company's (Duke's) nuclear plant applications, the Attorney General and the petitioners for antitrust hearings were primarily concerned with Duke's dominance in the relevant market. The thrust of the review centered upon any increase in that dominance that would occur by the addition of the Oconee, McGuire and Catawba nuclear units to Duke's integrated electrical system, and Duke's refusal to allow smaller electrical systems in the area where Duke serves to share in the ownership of the nuclear units or to interconnect with Duke and coordinate power supply services. Following negotiations, Duke agreed to set of antitrust commitments which were to be attached as antitrust license conditions to its nuclear plant construction permits and operating licenses. These license conditions required Duke to interconnect and provide power supply services to smaller electric utilities in the area where it serves, including notification of plans to construct future nuclear units, but did not specifically require Duke to provide ownership access to the Oconee, McGuire or Catawba nuclear units.

"Subsequently, Duke entered into agreements with municipal and cooperative power agencies in both North Carolina and South Carolina, providing these agencies with ownership interests in Catawba Unit 1 and 2, and with ancillary services to make this ownership economical. Specifically, the North Carolina Electric Membership Corporation and the Saluda River Cooperative, Inc. have been provided an ownership interest in Catawba 1. Similarly, the North Carolina Municipal Power Agency 1 and the Piedmont Municipal Power Agency have been provided an ownership interest in Catawba 2. The ownership agreements have been supplemented by interconnection agreements which provide (1) interim power supply from Duke's other nuclear units prior to commercial operation of the Catawba units (2) emergency backup power among the nuclear units whereby each nuclear unit is supported by others, (3) a buy-back arrangement by Duke to allow the municipals and cooperatives to gradually increase their capacity allotments, (4) transmission services, and (5) supplemental purchases and sales by Duke to permit the municipals and cooperatives to match their energy requirements from hour to hour.

"The NRC staff believes that the above changes are consistent with the commitments made by Duke during the construction permit antitrust negotiations and are consistent with the Department of Justice and Nuclear Regulatory Commission desires to enhance the competitive process in bulk power supply markets. Staff's investigations and analysis have disclosed no anticompetitive connection between the activities of the applicants and the changes that have occurred since the construction permit application reviews for Catawba 2. The changes that have occurred in rate schedules, inquiries regarding power purchases and sales, and changes in membership and nuclear plant ownershp shares of the municipal and cooperative organizations have had negligible competitive impact upon the bulk power supply in the Piedmont Carolinas. Accordingly, the NRC staff is not recommending a "significant change" finding with respect to the Catawba 2 operating license application."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Catawba Nuclear Power Station, Unit 2 is not required.

Signed on November 19, 1985 by Harold R. Denton, Director of Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of publication of this **Federal Register** notice. Requests for a reevaluation of the no significant change determination shall be accepted after the date when the Directors' finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been subittted prior to that date.

For the Nuclear Regulatory Commission.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-28090 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027]

Finding of No Significant Impact Amendment of Source Materials License No. SUB-1010 Sequoyah Fuels Corp.; Gore, OK

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Source Materials License No. SUB-1010 to permit the construction and operation of a facility to convert depleted uranium hexafluoride (UF_6) to depleted uranium tetrafluoride (UF_4) at the Sequoyah Fuels Corporation (SFC) site at Gore, Oklahoma.

Summary of Environmental Assessment

Identification of the Proposed Action: The proposed action would allow SFC to construct and operate a facility to produce depleted UF_4 at the plant site in Gore, Oklahoma. The facility will utilize a dry process to convert depleted UF_6 to UF_4.

The Need for the Proposed Action: The Department of Defense (DOD) requires depleted uranium metal for the manufacturing of penetrator missiles. The UF_4 needed for the production of the metal is currently obtained from the Department of Energy (DOE). However, the government stockpile of depleted UF_4 is being exhausted. The DOD has determined that the depleted UF_4 required to support the program should be supplied by private industry. Currently there are no private suppliers of UF_4 in the United States. In addition to the SFC proposal, a facility is presently under construction in South Carolina that will be capable of supplying approximately 30 percent of the demand.

Environmental Impacts of the Proposed Action: An Environmental Assessment (NUREG-1157) related to the operation of SFC's UF_6 production facility was issued in 1985 with a Finding of No Significant Impact. The proposed UF_6 to UF_4 facility will be a small part of the overall Sequoyah operation. The construction will involve no new commitment of land resources. The operation of the UF_6 to UF_4 facility will result in effluent releases that are a small fraction of the effluents released from the existing operation.

The cumulative radiological impacts of the SFC facility were assessed by estimating the maximum dose to the individual living at the nearest residence and to the local population living within an 80 km (50 mile) radius of the plant site. Based on the past monitoring data and a conservative estimate of the UF_6 to UF_4 facility releases, the NRC staff has calculated the cumulative 50 year dose commitments to the maximally exposed individual living at the nearest residence (730 meter NNE of the plant site); the committed doses are whole body 1.0 mrem, bone 6.6 mrem, and lung 16.5 mrem. The cumulative doses are below the 25 mrem limits set by the U.S. Environmental Protection Agency (EPA) for the uranium fuel cycle facilities (40 CFR Part 190). The collective whole-body dose for the population within an 80 km (50 mile) radius of the plant is 2.6 man-rem which is only about 0.006 percent of the population dose of 4.6×10^4 man-rem resulting from the natural background radiation dose in the area. For non-radiological air effluents, the plant is in compliance with the permit requirements issued by the State of Oklahoma. The estimated increase in gaseous effluents from the proposed UF_4 facility are not expected to change the existing air quality. For non-radiological liquid effluents discharged to surface water, SFC is subject to the National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA. Compliance history for past years indicated that SFC is generally in comliance with the NPDES permit except for a few occasional short-term violations. Therefore, the staff concludes that there will be no significant impacts associated with the proposed actions.

Alternatives to the Proposed Action

One of the available alternatives is to use wet chemical processes as opposed to the dry process. The wet processes either produce a hazardous organic solution that requires special disposal methods or a large volume of liquid effluent in addition to the gaseous effluent. It is the staff's considered opinion that the adverse environmental impact is greater for the wet processes than for the proposed dry process.

Another alternative would be to deny the requested amendment. Denial of the application will only result in the operation being performed elsewhere, thus transferring the environmental impact to another site. Although denial is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved to the satisfaction of regulatory authorities involved.

Agencies and Persons Consulted: On June 3-4, 1985, the NRC staff met with representatives of the DOE facility in Paducah, Kentucky, where a similar facility was operated at one time. The staff also spoke to a representative of the Oklahoma Department of Health.

Finding of No Significant Impact: Based upon the Environmental Assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the following documents: (1) Kerr-McGee Nuclear Corporation, Sequoyah Facility license amendment application, License SUB-1010, Docket No. 40-8027, January 24, 1985; (2) Kerr-McGee Nuclear Operation Responses to U.S. Nuclear Regulatory Commission information requests, June 21, 1985; (3) Kerr-McGee Nuclear Corporation, Sequoyah Facility Supplemental Information dated April 22, and July 5, 1985; and (4) U.S. Nuclear Regulatory Commission, Environmental Assessment for the Renewal of Source Materials License SUB-1010, Sequoyah Fuels Corporation, Docket No. 40-8027, August 1985.

The Environmental Assessment for the amendment and the above documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room at the Sallisaw City Library, 111 North Elm, Sallisaw, Oklahoma. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland this 19th day of November 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fule Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-28091 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of sections 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor

Safeguards will hold a meeting on December 5–7, 1985, in room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the Federal Register on September 24, 1985.

The agenda for ths subject meeting will be as follows:

Thursday, December 5, 1985

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:00 A.M.: Requalification of Reactor Operators (Open)—Discuss proposed ACRS comments regarding the adequacy of the NRC reactor requalification program. Representatives of the NRC Staff will participate, as appropriate.

10:15 A.M.–12:15 P.M.: Generl Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—Discuss proposed ACRS reports regarding the request for an FDA for this type facility.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and detailed arrangements regarding security provisions for this type faciility.

1:15 P.M.–3:15 P.M.: Prioritization of New Generic Issues (Open)—Discuss proposed ACRS comments regarding the priorities proposed by the NRC Staff for resolution of new unresolved generic issues. Members of the NRC Staff will participate, as appropriate.

3:30 P.M.–4:00 P.M.: Future ACRS Activities (Open)—Discuss anticipated activities of ACRS subcommittees and proposed items for consideration by the full Committee.

4:00 P.M.– 5:30 P.M.: State of Nuclear Reactor Safety (Open)—The members of the Committee will hear and discuss the report of its subcommittee on the state of nuclear power plant safety and will consider proposed ACRS comments regarding this matter.

Friday, December 6, 1985

8:00 A.M.–8:30 A.M.: ACRS Annual Report on the NRC Proposed Safety Research Program and Budget for FY 1987 (Open)—The members will discuss the scope and format for this report.

8:30 A.M.–9:30 A.M.: NRR Activities (Open)—The members will hear and discuss a briefing by the Director, Office of Nuclear Reactor Regulation regarding recent activities of NRR.

(Note: This session may be replaced with a briefing regarding the status of the Davis-Besse Nuclear Power Station.)

9:45 A.M.–11:30 A.M.: Operator Licensing Requirements (Open)—The members will hear and discuss the report of its subcommittee and representatives of the NRC Staff regarding proposed revisions of 10 CFR Part 55, Operators' Licenses.

11:30 A.M.–12:30 P.M.: TVA Reorganization (Open)—The members will hear a briefing regarding the status of a proposed reorganization of TVA Nuclear activities.

1:30 P.M.–2:15 P.M.: TVA Reorganization (Open)—Discuss proposed ACRS activities/comments regarding this matter.

2:15 P.M.–3:30 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)

The members will continue discussion of proposed ACRs reports regarding the request for an FDA for this type nuclear facility.

Portions of this session will be closed to discuss Proprietary Information applicable to this facility design and detailed arrangements for security provisions of this type of nuclear plant.

3:45 P.M.—4:15 P.M.: Decay Heat Removal (Open)—The members will hear and discuss a status report regarding the NRR resolution effort for USI A–45, Shutdown Decay Heat Removal Requirements.

4:15 P.M.—6:30 P.M.: Millstone Nuclear Power Station, Unit 1 (Open/Closed)—The members will consider the request of the licensee for a full term operating license for this facility.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and detailed security arrangements for this facility.

Saturday, December 7, 1985

8:30 A.M.—8:45 A.M.: Election of ACRS Officers (Closed)—The members will discuss the qualifications and commitments of candidates proposed as ACRS Officers during CY 1986.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

8:45 A.M.—12:30 P.M. and 1:30 P.M.—2:30 P.M.: ACRS Reports to NRC (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting as well as topics considered but not completed during the 307th ACRS meeting which was held on November 7–9, 1985. This includes ACRS comments regarding restart of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, reactor operations, the technical basis for estimating source terms and the definition of high-level waste.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and detailed security arrangements for the facilities being considered.

2:30 P.M.—3:30 P.M.: ACRS Subcommittee Activities (Open)—Chairman and members of designated ACRS subcommittees will report on the status of related activities including the NRC radwaste program and radwaste management, water chemistry control in boiling water reactors, and long-range NRC planning.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], detailed security information [5 U.S.C. 552b(c)(3)], and information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: November 20, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-28087 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Subcommittees on Safety Philosophy, Technology, and Criteria and Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittees on Safety Philosophy, Technology, and Criteria and Reliability and Probabilistic Assessment will hold a joint meeting on December 4, 1985, Room 1167, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 4, 1985—9:30 A.M. until the conclusion of business.

The Subcommittees will meet with the EDO and discuss outstanding issues relating to the NRC position on a revised Safety Goal Policy and to meet with Northeast Utilities and the NRC Staff to discuss the ongoing work on the Millstone Unit 1 Probabilistic Safety Study.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 19, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-28088 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

Statement of Policy on Confidentiality

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This statement presents the Commission's policy for protecting the identity of an individual who has been promised confidentiality. It provides details regrading the background of the development of this statement of policy. It also explains the circumstances under which the NRC may grant confidentiality, and the manner and form in which confidentiality will be granted. Finally, it will describe the circumstances and extent to which the identity of a confidential source may be divulged, and the circumstances under which a grant of confidentiality may be revoked.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Richard P. Levi, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (202-634-3224).

SUPPLEMENTARY INFORMATION:

Introduction

The Nuclear Regulatory Commission ("NRC" or "Commission") has decided to issue this Statement of Policy in order to provide a clear, agency-wide policy on confidentiality. The Commission's inspection and investigatory programs rely in part on individuals voluntarily coming forward with information. Some individuals will come forward only if they believe their identities will be protected from public disclosure, *i.e.*, only if they are given confidentiality. Safeguarding the identities of confidential sources is therefore a significant factor in ensuring the future voluntary flow of such information.

The Commission through this Policy Statement, which applies to all NRC offices, intends to make clear that it will make its best efforts to protect the identity of a confidential source. As explained in more detail below, the identity of a confidential source will be divulged within the NRC only to those with a need-to-know. It will be divulged outside the NRC only in the following narrow situations:

(1) When a court orders such disclosure;

(2) When required in NRC adjudicatory proceedings by order of the Commission itself;

(3) When a Federal or State agency requires the identity in furtherance of its statutory responsibilities and agrees to abide by the terms of the Commission's confidentiality agreement, and the confidential source agrees to the release; if the source does not agree to the release, the identity of the source will be provided to another agency only in an extraordinary case where the Commission itself finds that furtherance of the public interest requires such release; or

(4) In response to a written Congressional request and in accordance with item 3 of the Policy Statement.

This approach should protect the identity of confidential sources except in a few, unusual situations. In those situations the Commission will take whatever actions it can, such as seeking a protective order, to limit disclosure to the minimum extent necessary.

The following discussion provides details regarding the background of the development of this Policy Statement. It also explains the circumstances under which the NRC may grant confidentiality, and the manner and form in which confidentiality will be granted. Finally, it will describe the circumstances and extent to which the identity of a confidential source may be divulged, and the circumstances under which a grant of confidentiality may be revoked.

Background

The Commission created an Advisory Committee For Review of Investigation Policy on Rights of Licensee Employees Under Investigation (hereinafter "Advisory Committee") on February 25, 1983. One of the issues the Commission asked the Advisory Committee to address concerned confidentiality.

The Advisory Committee, which submitted its report to the Commission on September 13, 1983, defined confidentiality as "the withholding from dissemination to the public . . . of the name and other personal identifiers of certain individuals who provide information to the Commission." The Advisory Committee noted that a grant of confidentiality would be subject to certain limitations, *e.g.*, the confidential

source's name might be revealed to another agency, a court, or a hearing board, or might be publicly released where the source acted in a manner inconsistent with the grant of confidentiality. The Advisory Committee recommended against granting confidentiality to all interviewees because of the difficulty of implementing effective confidentiality agreements, and the difficulties which grants of confidentiality might cause to an investigation or enforcement action. The Advisory Committee also recommended against adopting different policies for different types of interviewees, although it noted that the status of the interviewee may be a valid consideration in making a case-by-case determination on whether to grant confidentiality. Finally, the Advisory Committee recommended that the Commission not normally grant confidentiality in the absence of a request, and that the NRC advise a witness of the availability of confidentiality only where appropriate in the judgment of the investigator.

The Department of Justice (DOJ) commented on the Advisory Committee's report on February 16, 1984. The DOJ agreed that the NRC should not have a blanket policy of granting confidentiality to every witness who requests it. The DOJ felt that giving confidentiality would be most important in the case of those who report a violation, the existence of which is unknown to the NRC, while giving confidentiality would be least important for those who only confirm or corroborate a violation after the NRC has discovered the violation and the probable indentity of those responsible. The DOJ felt that witnesses in a third category—those who give leads to the NRC regarding how a known violation occurred and/or who may have been responsible—presented a more difficult question.

The DOJ then took issue with the limitations on grants of confidentiality suggested by the Advisory Committee. The DOJ stated that the possibility of disclosure of a confidential source's identity is "quite remote." The DOJ maintained that the NRC would not have to disclose a confidential source's identity to another public agency, and that an interviewee should not necessarily be considered to have waived confidentiality by providing information to another person which contradicts what he/she told the NRC. The DOJ further stated that a hearing board does not have the authority to compel disclosure of a confidential source's identity, and that a court would do so only under extremely rare circumstances, and, even then, under very restricted conditions. The DOJ concluded that the NRC should assure anyone given confidentiality "of the ability and efforts available to protect his identity."

Policy Statement

The Commission's investigative and inspection programs rely in part on individuals coming forward with information about safety concerns or perceived wrongdoing. *See, e.g., Union Electric Company* (Callaway Plant, Units 1 and 2), ALAB-527, 9 NRC 126, 134 (1979). Public release of the identities of those who come forward with such information could lead to reprisals against those individuals. Reprisals may involve not only physical harm to the individual, but may "take more subtle forms such as economic duress, blacklisting or ostracism." *In re United States*, 565 F.2d 19, 22 (2d Cir. 1977), *cert. denied sub nom. Bell* v. *Socialist Workers Party*, 436 U.S. 962 (1978). *See also Houston Lighting & Power Company* (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469 (1981). Such actions obviously would deter others from coming forward with information, and, accordingly, could jeopardize the effectiveness of the NRC's activities.

Both Congress and the Commission have recognized this concern. Section 210 of the Energy Reorganization Act, 42 U.S.C. 5851, and the Commission's regulations implementing that section are designed to protect those who assist the NRC in carrying out its safety responsibilities from retaliation. Similarly, the Commission's regulations authorize the withholding of the identities of confidentil sources from public release. 10 CFR 2.744(d), 2.790(a)(7). Further, Part 21 of the Commission's regulations provides that, "as authorized by law," the identity of individuals "not subject to the regulations in this part" who report certain nuclear safety-related problems "will be withheld from disclosure." 10 CFR 21.2. the following discussion explains the Commission's general policy regarding confidentiality.

1. Circumstances Under Which Confidentiality May Be Granted

The Commission, while it recognizes the importance of confidentiality, does not believe that confidentiality should be granted to all individuals who provide information to the NRC, that it should be granted as a routine matter, or even that individuals should routinely be advised of its availability prior to being interviewed. Rather, the Commission believes that confidentiality should be granted only when necessary to acquire information related to the Commission's responsibilities, or when warranted by special circumstances. It should ordinarily not be granted, for instance, when the individual is willing to provide the information without being given confidentiality.

This determination is based on several considerations. First, there is little purpose as a general matter in offering or granting confidentiality to someone who has not requested it. Indeed, such action could impede the free flow of information by implying that the witness needs confidentiality, and could lead to difficulties in utilizing the information at a later time in connection with an investigation or enforcement action. Second, it is essential to protect the identity of the confidential source to the utmost extent possible if confidentiality is granted. Widespread grants of confidentiality would increase the likelihood that the identity of a confidential source would be inadvertently released. Third, the Advisory Committee was aware of "no empirical evidence" indicating that widespread grants of confidentiality might increase significantly the flow of information to the Commission, a primary reason for ever considering widespread grants.

The Commission recognizes, however, that some individuals who desire confidentiality may not request it because of an erroneous belief that the identities of all persons providing information to the NRC are kept in confidence, and some individuals may not provide information because they do not know of the availability of confidentiality. While the Commission finds that its need to have the maximum possible use of information to carry out its responsibilities outweighs the potential benefits from routinely offering or granting confidentiality, the Commission is concerned about those who may be harmed by their erroneous understanding of whether they have been given confidentiality, and about those who do not know of the availability of confidentiality.

The Commission has therefore decided to adopt a policy which requires an individual desiring confidentiality explicitly to request it, but allows an authorized NRC employee to raise the issue of confidentiality in the absence of a request in certain circumstances, as follows. When it becomes apparent that an individual is not providing information because of a fear that his/her identity will be disclosed, an

authorized NRC employee may raise the issue of confidentiality. Similarly, an authorized NRC employee may suggest confidentiality in the absence of a request when it is apparent from the surrounding circumstances that the witness wishes his/her identity to remain confidential. This could be the case, for instance, where a witness sets up an interview in a secretive manner. Because of the wide variety of possible circumstances here, however, the Commission cannot provide explicit guidance in this area, but must leave implementation of this policy to the discretion of the relevant NRC employees.

The Commission also sees no reason to treat various groups differently in this regard. The purpose served by granting confidentiality may be more pronounced for one group than another, *e.g.*, it may be more pronounced for employees who come to the NRC with evidence of violations unknown to the NRC than for those who only confirm what the NRC already knows. Again, the Commission does not believe it is possible to lay down any specific guidance in this area because of the almost limitless diversity of possible situations, and each request for confidentiality will have to be resolved on a case-by-case basis by an NRC employee authorized to grant confidentiality.

2. The Manner and Form in Which Confidentiality Should Be Granted and Disseminated Within the NRC

The Commission has decided to allow the Director, Office of Investigations (OI), the Director, Office of Inspector and Auditor (OIA), and the Executive Director for Operations (EDO) to designate those persons within their organizations who will be authorized to grant confidentiality. Confidentiality will be granted only when an NRC employee authorized to grant confidentiality and the individual requesting confidentiality sign a standard NRC Confidentiality Agreement, unless it is impossible to sign the Agreement at the time the information is obtained. The Agreement will explain the conditions to which the NRC will adhere when it grants confidentiality, as set forth in this Policy Statement. In those circumstances where it is impossible to sign a Confidentiality Agreement at the time the information is obtained, *e.g.*, where the information is obtained over the telephone, confidentiality may be given orally pending signing of the Confidentiality Agreement, which must be done within a reasonable time. If confidentiality is granted orally, this must be fully documented by the person granting it. If the Confidentiality Agreement is not signed within a reasonable time, the EDO, Director, OI, or Director, OIA, as appropriate, will determine whether the confidentiality should be continued.

Once confidentiality is granted, the individual's name should be divulged to NRC employees only on a need-to-know basis. Each NRC employee with access to a confidential source's identity should take all necessary steps to ensure that the identity is not further disseminated. The Director, OI, and EDO, and the Director, OIA are to ensure that consistent procedures are developed throughout the agency for implementing this requirement, which should prevent inadvertent disclosures.

3. Circumstances Under Which Identity of a Confidential Source Will Be Divulged

The Commission stresses the importance which it attaches to protecting the identity of a confidential source. There are, however, four narrow circumstances where the identity of a confidential source may be released outside the NRC. The Commission emphasizes that in each of those cases the Commission will attempt to limit disclosure to the minimum necessary, and that it expects such disclosure to occur only rarely.

(1) The first category involves disclosure pursuant to a court order. There are conceivable circumstances where a licensee or other entity could obtain a court order requiring the NRC to divulge the identity of a confidential source. If that happens, the NRC will seek to keep the disclosure limited, through protective orders or otherwise, to the minimum necessary.

With regard to the standards used by a court in deciding whether to order disclosure, it is clear that "[w]here the disclosure of an informer's identity, or of the contents of his communications, is relevant and helpful to the defense of the accused, or is essential to a fair determination of a cause, the privilege must give way." *Roviaro* v. *United States*, 353 U.S. 53, 60–61 (1957). Thus, for instance, disclosure is in all likelihood required to ensure a fair trial in cases like *Roviaro*, where the informant played an active and crucial role in the events underlying the potential criminal or civil liability, or the licensing action. At the other extreme, where the informant is not an active participant, but rather a mere tipster, disclosure would normally not be required. The most difficult cases involve a third category, where the defendant may benefit from disclosure, but the Government claims a compelling need to protect the informant's identity. In those types of cases, the courts will balance the importance of the informant's testimony to the defendant's case against the strength of the Government's interest in maintaining the informant's anonymity. *See generally Suarez* v. *United States*, 582 F.2d 1007 (1978).

(2) The second category of circumstances where a confidential source's identity might be disclosed outside the NRC involves disclosure during an NRC adjudicatory proceeding. While a court, through its contempt powers, can enforce an order directing that the identity of a confidential source be released, an adjudicatory board must issue a subpoena to obtain the identity of a confidential source, and must seek enforcement of the subpoena in court. In this general sense, then, an NRC adjudicatory board does not have the authority to require that the identity of a confidential source be revealed, because it does not have contempt powers.

However, as a practical matter the Commission, as the ultimate adjudicatory authority within the NRC, can require the NRC staff to reveal a confidential source. The Commission in a separate Statement of Policy on Investigations, Inspections, and Adjudicatory Proceedings has provided that any Licensing Board decision to order disclosure of the identity of a confidential source shall automatically be certified to the Commission for review. 49 FR 36032 (September 13, 1984). Therefore, the only adjudicatory board within the NRC with the actual authority to require that the identity of a confidential source be revealed is the Commission. It is thus appropriate to provide some general guidance on when the Commission will require such disclosure.

The proper approach for an adjudicatory board in deciding whether to order disclosure is the same as that for a court, *i.e.*, it should follow the standards set forth in *Roviaro* and its progeny and balance the public interest in protecting the flow of information against a party's right to develop his/her claim or defense. Whether that balance requires disclosure "must depend upon the particular circumstances of each case . . ." *Roviaro, supra*, 353 U.S. at 62. Factors to be considered in making this determination include whether the information provided by the confidential source is reasonably available through alternative means, whether it relates directly to the substantive allegations at issue in the proceeding, what the present employment position of the confidential source is, whether a party's

right to present rebuttal evidence or to conduct the cross-examination will be violated if he/she is not provided the names, and whether disclosure is necessary to complete the record. After considering the revelant factors, the Commission will order release only if necessary under the standards set forth in *Roviaro* and its progeny. The Commission notes in this regard that, unlike in the case of a criminal prosecution, the NRC may not have the option of dismissing a case to avoid disclosing a confidential source, as, for instance, where the identity of the source is material and relevant to a substantial safety issue or a licensing proceeding.

(3) The third area where the identity of a confidential source might be released is in response to a request by Congress. Section 303 of the Atomic Energy Act requires the NRC to keep the Congressional committees with jurisdiction over the NRC "fully and currently informed with respect to the activities . . . of the Commission." That section also requires "[a]ny Government agency [to] furnish any information requested by [Congressional] committees with appropriate jurisdiction. . . ." The Commission accordingly may have to release the identity of a confidential source in response to a Congressional request. While any such request will be handled on an individual case-by-case basis, the Commission will disclose the identity of a confidential source only if the request is in writing and it will make its best efforts to have any such disclosure limited to the extent possible.

(4) The fourth area where a confidential source may be revealed is in response to a request from a Federal or State agency. The Commission recognizes its responsibility to assist other agencies in their functions. However, the Commission also recognizes that providing the identities of confidential sources to other agencies could adversely affect the flow of information to the Commission. The Commission has decided to balance these two considerations as follows. If the other agency demonstrates that it requires the identity in furtherance of its statutory responsibilities and it agrees to provide the same protections to the source's identity that the NRC promised when it granted confidentiality, the NRC will make a reasonable effort to contact the source to determine if he/she objects to the release. If the source can be reached and does not object, the EDO or his designee, or the Directors of OI or OIA, are authorized to provide that identity to the other agency.

If the source objects to the release of his/her identity, or cannot be reached, however, the EDO or his designee, or the Directors of OI or OIA, may not release the source's identity, but shall advise the other agency of the source's objection or that he/she cannot be reached. That agency may then request the Commission itself to release the identity. While ordinarily the source's identity will not be provided to another agency over the source's objection or without contacting him/her, in extraordinary circumstances where furtherance of the public interest requires release the Commission may release the identity of a confidential source to another agency over the objections of that source or without being able to contact him/her. Even in those cases, however, the other agency must agree to provide the same protections to the source's identity that were promised by the NRC.

4. Circumstances Under Which Confidentiality May Be Revoked

A decision to revoke a grant of confidentiality can only be made by (1) the Commission itself, (2) the EDO, (3) the Director, OI, or (4) the Director, OIA. In each case, only the office which originally granted confidentiality can revoke that grant, except that the Commission may revoke a grant given by any office.

The Commission emphasizes, however, that a grant of confidentiality will be revoked only in the most extreme cases. As a general matter, confidentiality will be revoked only where a confidential source personally takes some action so inconsistent with the grant confidentiality that the action overrides the purpose behind the confidentiality. This can happen, for instance, when the source reveals in a public forum the same information he/she gave to the NRC, or when he/she has intentionally provided false information to the NRC. Before revoking confidentiality, the Commission will attempt to notify the confidential source of its intent and provide him/her an opportunity to explain why such action should not be taken.

5. Conclusion

In sum, the Commission views grants of confidentiality as an important adjunct to the Commission's investigative and inspection programs. The Commission therefore places great emphasis on protecting the identity of individuals granted confidentiality. However, the Commission recognizes that there are limited circumstances, as explained above, where the identity of a confidential source will be divulged outside the NRC. In those circumstances the Commission will attempt to limit disclosure to the minimum extent possible.[1]

Dated at Washington, D.C., this 19th day of November, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-28089 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-529 and STN 50-530]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Units 2 & 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power,[1] and Southern California Public Power Authority (the applicants) for the Palo Verde Nuclear Generating Station, Units 2 and 3, located at the applicants' site in Maricopa County, Arizona.

---

[1] The Commission recognizes that individuals providing information to the NRC may have privacy concerns even if they do not request confidentiality. The Commission intends also to protect those concerns.

When the NRC makes an investigation or inspection report public, either in response to a request or on its own initiative, it will normally make its best efforts to delete names and identifying details of those reporting a health and safety concern, common defense and security concern, or other similar concern to the NRC. It will similary delete names and identifying details of those who have been identified by an alleger as potentially having such information. In making these deletions, the Commission will only withhold those names and identifying details which it could withhold under applicable law in responding to a request for that information. In this manner, those who have not requested confidentiality will still have some measure of protection against public dissemination of their identities.

However, this policy, which does not impact on other deletions which might be made under applicable law, is not binding. The agency may decide not to follow this policy in a case where contervailing considerations require disclosure, and the policy also will not apply where the source of the information is already publicly known.

[1] The Los Angeles Department of Water and Power will not actually become a co-owner until after Palo Verde Unit 1 achieves commercial operation.

Environmental Assessment

Identification of Proposed Action: The Exemption would permit eliminating the need to install the pipe whip restraints and jet impingement shields and to not consider the dynamic effects associated with postulated pipe breaks in the Palo Verde Units 2 and 3 primary coolant system, on the basis of advanced calculational methods for assuring that piping stresses would not result in rapid piping failure; i.e., pipe breaks.

Need for Proposed Action: The proposed Exemption is required because GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals, the applicants have provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas, such as the double-ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the applicants' conclusion. Therefore, the NRC staff agrees that the double-ended guillotine break in the primary pressure coolant loop piping, and its associated dynamic effects, need not be required as a design basis accident for pipe whip restraints and jet impingement shields, i.e., the restraints and shields are not needed. Accordingly, the NRC staff agrees that an exemption from GDC 4 is appropriate.

Environmental Impact of the Proposed Action: The proposed Exemption would not affect the environmental impact of the facility. No credit is given for the barriers to be eliminated in calculating accident doses to the environment. While the jet impingement barriers would minimize the damage from jet forces from a broken pipe, the calculated limitation on stresses required to support this proposed Exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet impingements shields would have no significant effect on the overall plant accident risk.

The proposed Exemption does not otherwise affect radiological plant effluents. Likewise, the relief requested does not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints and jet impingement shields would tend to lessen the occupational doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with this proposed Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with this proposed Exemption, any alternatives would not provide any significant additional protection of the environment. The alternative to granting the Exemption would be to require literal compliance with GDC 4.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License Stage) for Palo Verde, Units 2 and 3.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this proposed Exemption for Palo Verde, Units 2 and 3. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the requests dated June 7, 1984, December 10, 1984 and July 16, 1985, and the information provided by the applicants in a letter dated October 3, 1984, and other information provided by Combustion Engineering, Inc., in letters dated June 14, 1983 and December 23, 1983, which are referenced by the applicants. These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. The staff's technical evaluation of the exemption request will be published with the exemption (if the exemption is granted) and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 19th day of November, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-28229 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of General Design Criterion 2 of Appendix A to 10 CFR Part 50 to the Northeast Nuclear Energy Company (the licensee) for the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action: The schedular exemption would allow the licensee additional time to complete implementation of its seismic interaction program. The proposed exemption is in accordance with the licensee's request dated October 15, 1985, supplemented November 18, 1985.

Need for Proposed Action: The proposed exemption is required to provide the licensee additional time to complete implementation of its seismic interaction program.

Environmental Impact of the Proposed Action: The proposed schedular exemption allows additional time for completion of the licensee's seismic interaction program. The program is primarily a confirmation of the plant design and no hardware modifications are anticipated as a result of the program. In addition, the schedular exemption would only allow operation up to 5% power before completing the program. At these levels, the accumulated fission product inventory will be minimal and the potential environmental impact would be correspondingly low. And finally, the probability of having a safe shutdown earthquake prior to completing the seismic interaction program is extremely low.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental

impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the "Final Environmental Statement related to the operation of the Millstone Nuclear Power Station, Unit 3," dated December 1984.

Agencies and Persons Contacted: The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environment impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated October 15, 1985, supplemented November 18, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 20th of November 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-28228 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Northeast Nuclear Energy Company (the licensee) for the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the licensee's request dated September 26, 1985.

Need for Proposed Action: The proposed exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impact of the Proposed Action: The proposed exemption grants the substitution of an air lock seal test for an air lock pressure test while the reactor is in the shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could leak to higher offsite and control doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the "Final Environmental Statement related to the operation of the Millstone Nuclear Power Station, Unit 3," dated December 1984.

Agencies and Persons Contacted: The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated September 26, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland this 20th day of November 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing Division of Licensing.

[FR Doc. 85-28230 Filed 11-22-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22638; File No. SR-BSE-85-8]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc.; Relating to Amendments to Chapter II, Section 6 of the Boston Stock Exchange Rules

November 19, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), Notice is hereby given that on October 29, 1985 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Chapter II

Dealings on the Exchange

* * * * *

Bids and Offers for Stocks

Sec. 6. Bids and offers for stocks may be made only as follows:

(a) "Cash", i.e. for delivery upon the day of contract.

(b) "Regular Way", i.e. for delivery upon the fifth full business day following the contract.

(c) "Buyer's" or "Seller's" Options for not less than six days nor more than sixty days.

(d) "Next Day", i.e., for delivery on the next business day following the day of the contract. For purposes hereof, "next day" may also include deliveries within the time specified in the contract which time may include either the second, third or fourth full business day following the day of the contract.

[(d)]*(e)* "When issued", i.e., for delivery when issued, as determined by the Board of Governors.

[(e)]*(f)* "When distributed", i.e. for delivery when distributed, as determined by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to codify the current BSE policy of allowing trades to be effected on the BSE Floor for settlement periods after than "cash", "regular way", "buyer's or seller's options", "when issued" and "when distributed".

The proposed change is the result of an industry trend toward effecting alternate settlement transactions in furthering the investment objectives of certain of their customers.

Other exchanges allow or are proposing to allow alternative settlement periods and the BSE is convinced it should afford its member-organizations the same opportunities consistent with section 6 of the Securities Exchange Act of 1934 so as to remove an impediment to a free and open market and to foster cooperation and coordination with persons engaged in settling and facilitating transactions.

(b) The statutory basis for the proposed rule change is section 6(b)5 of the Securities Exchange Act of 1934 in that the change will promote cooperation within the national market system, thus benefitting the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW, Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28012 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22624; File No. SR-BSE-84-4 Amdt. No. 1]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by Boston Stock Exchange, Inc.; Relating to Amendments to Chapter XV of the Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1985, the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission Amendment No. 1 to proposed rule change SR-BSE-84-4, as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend Chapter XV of its Rules to authorize the Market Performance Committee to take one or more of the following actions if the specialist has consistently received evaluations which are below a minimum level of acceptable performance pursuant to the policies of the Exchange's Specialist Performance Evaluation Measures Program: (i) Withdraw Exchange approval of a member's registration as a specialist in one or more stocks, (ii) reduce the percentage of stocks that can be protected by a specialist against new specialists developing books, (iii) suspend the specialist's trading account.

Specialist evaluations will be conducted in accordance with procedures described in BSE Rule 2155. (See Exhibit A.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish procedures whereby the Market Performance Committee ("Committee") may take one or more actions to encourage improved performance from a specialist who is below performance levels established by the Committee. The proposed amendment also grants a member the opportunity to be heard before the Committee and to have the Board of Governors review the decision of the Committee.

The specialist performance evaluations will be conducted every four months and will include two areas of performance measurement, weighted as follows:

(1) The Specialist Performance Evaluation Questionnaire—75%, and (2) the evaluation of specialist quotations—25%. The questionnaire is composed of nine weighted questions and five background questions, and is designed to measure specialist performance in all areas of specialist responsibility as provided for in the BSE Constitution and Rules. Weighted questions are designed to measure the relative importance of the performance area measured by the question. Specialists currently will be evaluated on the competitiveness of their quotations in their six most active Intermarket Trading System ("ITS") issues. The evaluation is limited to these most active stocks because the Exchange's quotation evaluation system is not yet computerized.

The quotation evaluation system credits different size quotes by utilizing a schedule whereby manually input quotations are credited if the bid or offer meets increasing size requirements at each one-eighth point interval away from the primary market. For instance, if the bid or offer is equal to or better than the primary market quotation, the minimum size required to receive full credit would be 100 shares. If the variation is one-eighth, the minimum size requirement would be 200 shares, and at a variation of one-quarter, 500 shares. The maximum acceptable variation away from the primary market quotation is three-eighths, and the minimum size required in such cases to receive full credit would be 1,000 shares. To meet Exchange requirements for satisfactory performance, a specialist must meet the aforementioned schedule 20% of the time. As overall specialist performance improves, the Market Performance Committee will raise the minimum standards as appropriate.

Unsatisfactory ratings on either the Specialist Performance Evaluation Questionnaire or the quotation evaluation will result in the following action:

(1) If a specialist receives an average grade below three on the questionnaire (on a one to five rating scale, with five being highest), a meeting with the Performance Improvement Action Subcommittee will be required. This also will occur if the specialist receives a grade below three for one question for two out of three successive review periods, or if the specialist does not meet the quotation schedule 20% of the time;

(2) A specialist will be required to meet with the full Market Performance Committee in the event it receives an average grade below three on the questionnaire in two out of three successive review periods, or if it receives a grade of below three on one question in one out of two review periods subsequent to meeting the conditions for review by the Subcommittee. Those specialists failing to meet the schedule for acceptable quotas at least 20% of the time in two out of three review periods also would be subject to review by the full Market Performance Committee.

Any specialist that meets a condition that warrants meeting with the full Market Performance Committee may be subject to one or more of the following performance improvement actions: (1) Withdrawal of registration in one or more stocks; (2) limitations on the percentage of stocks that can be protected by a specialist,[1] and (3) withdrawal of a specialist's trading account.

The statutory basis for the rule change is section 6(b)(5) of the Securities Exchange Act of 1934, which, among other things requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed amendment imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed changes were developed by a subcommittee of the Market Performance Committee and subsequently endorsed by the full Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be dissapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

[1] All specialists are obligated to reserve 10% of their specialty stocks for acquisition by new specialists developing a book, thus allowing each specialist to protect 90% of their specialty stocks.

All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

November 14, 1985.

Exhibit A.—Proposed Amendment to Chapter XV of the Rules

Rule 2155

.03 Specialist Performance Improvement.

All Dealer-Specialists shall be subject to regular performance evaluation designed to identify areas of performance needing improvement. The Dealer-Specialist Performance Evaluation Program shall be administered by the Exchange, subject to the supervision of the Market Performance Committee.

Any Dealer-Specialist whose performance as a specialist is below acceptable performance levels established by the Market Performance Committee may be subject to specific improvement actions as determined by the Market Performance Committee. Such actions include withdrawal of approval to act as a specialist in one or more stocks, limitations on the privilege of protecting stocks from assignment to new specialists and the loss of the right to maintain trading accounts.

In the event that the performance of a Dealer-Specialist is below acceptable performance levels, notice of such fact shall be given to the Dealer-Specialist.

Notice to the member required by this rule shall be in writing and shall contain the specific grounds to be considered as the basis for withdrawal of approval. The member shall have an opportunity to submit a written reply no later than ten days after the receipt of such notice.

The member shall also have an opportunity to be heard upon the specific grounds to be considered before the Market Performance Committee and a written record of any such hearing shall be maintained. Following any such proceeding, the Market Performance Committee will inform the member in writing of its decision and reasons. The decision of a majority of the members of that Committee shall be final, subject to the power of the Board of Governors to review such decision in accordance with the provisions of Article III, Section 2 of the Constitution.

. . . Supplementary Material:

.10 *Stock Reallocation—Notice of Particular Stock*—Together with written notice of the specific grounds to be considered as the basis for withdrawal of approval, the Market Performance Committee will give the member written notice of the particular stock or stocks to be considered for withdrawal of approval and give a written explanation of the basis on which the stock or stocks were selected.

.20 *Stock Reallocation—Selection of Particular Stocks*—In designating a particular stock or stocks to be considered as the basis for withdrawal of approval, the Market Performance Committee shall consider indications of weaknesses in specialist performance in individual stocks to the extent such indications are available. Such indications of weak performance may include, among other factors, references to particular stocks by those responding to initial or supplemental evaluation questionnaires, and references in such questionnaires to weaknesses in performance of a type which relate to particular stocks or groups of stocks.

When the available measures of specialist performance indicate weak performance generally, and not precisely in any particular stock or stocks, the Market Performance Committee may decide nonetheless to withdraw approval for a particular stock or stocks. In any case, the Market Performance Committee will exercise its best judgment to select a stock or stocks as to which a reallocation by the Market Performance Committee is likely to result in improved specialist performance.

.30 *Limiting Protected Stocks*—All specialists are obligated to make available ten percent of the Dealer-Specialist's speciality stocks for acquisition by new Dealer-Specialists developing a book.

A Dealer-Specialist whose performance is below acceptable levels as determined by the Market Performance Committee may be required to make available more than the ten percent of the stocks in which he or she is registered.

.40 *Trading Account Suspension*—A specialist that meets a condition for review subject to the Specialist Performance Evaluation Program criteria shall be put on notice that approval for his or her trading account may be suspended if a condition for review is met in the subsequent period and may continue until the specialist's grades are within acceptable guidelines.

[FR Doc. 85-28013 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22634; SR-CBOE-85-41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on September 19, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to reverse the current sequence in opening options rotations so that the Board Broker or Order Book Official will first open the one or more series of options of a given class having the nearest expiration, then proceed to the series of options having the next most distant expiration, and so forth, until all series have been opened.

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 22491, October 1, 1985) and by publication in the **Federal Register** (50 FR 41270, October 9, 1985). No comments were received with respect to the proposed rule filing.

The rule change will amend Interpretation .01 to CBOE Rule 6.2 to reinstate the opening rotations sequence which the CBOE had followed until June of 1985. Since June, the CBOE had experimented with the revised opening rotations currently in effect.[1] Based on that experiment, however, the CBOE has determined to reinstate its prior procedures.

When the CBOE established reverse sequence opening rotations in equity options it stated its belief that there would be less discontinuity between the establishment of an opening price in the near term options and open trading. This benefit had been obtained by employment of a reverse sequence rotation in options on the Standard and Poor's 100 Index ("OEX"). The CBOE states, however, that the experience in OEX has not been transferrable to equity options for several reasons. First, because there is less activity in equity options than in OEX, the rotations in equity options are concluded much quicker and there is less potential price discontinuity between the price of an option in open trading.

Second, the CBOE states that the pricing of an equity option is more typically driven by its relationship to the price of the underlying stock than the price of an index is driven by its

[1] *See* File No. SR-CBOE-85-09, Securities Exchange Act Release No. 22042, May 15, 1985; 50 FR 21380, May 23, 1985.

relationship to the value of the underlying index. Because of the pricing relationship between equity options and the underlying stock, most market makers price all options based on how they price the near-term options. Accordingly, the reverse sequence procedure in options on individual stocks conflicts with this pricing procedure. In addition, the CBOE states that many customers who seek to have options, particularly near-term options, filled in opening rotations compare the price they receive to the opening price in the underlying stock, which can change substantially by the time near-term options are reached in a reverse sequence rotation. The Interpretation .01 to CBOE Rule 6.2 continues to allow modifications to opening rotations, including employment of a reverse sequence rotation, if circumstances, such as heavy opening trading volume, warrant its use.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change bne, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28008 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release no. 34-22632; File No. SR-DTC-85-4]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Co. Relating to Amendments of Rules 21 and 22 of the OTC Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1985, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organaization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith amendments of Rules 21 and 22 of the DTC Rules so that the Rules will provide as follows:

Rule 21—Disciplinary Sanctions

The Corporation may discipline a Participant or a Pledgee for a violation of these Rules or the Procedures or for errors, delays or other conduct detremental to the operations of the Corporation, Participants, or Pledgees, or for not providing adequate facilities for its business with the Corporation by imposing any of the following sanctions: expulsion; suspension; limitation of activities, functions and operations; fine; censure; and any other fitting sanction. In addition, in the event a Participant shall violate these Rules, the Procedures, or any of its agreements with the Corporation, the Corporation may require such cash or other deposit by a Participant to the Participants Fund or otherwise as shall be necessary or appropriate to protect the Corporation, Participants, or Pledgees, in the circumstances.

When the Corporation proposes to impose a sanction it will send the Participant or Pledgee a written statement describing the reason for the proposed sanction and notifying the Participant or Pledgee that it has an opportunity to respond pursuant to Rule 22. The sanction proposed may be imposed by the Chairman of the Board, the President, or the Secretary of the Corporation, unless, within five business days after notification of such proposed sanction, the Participant or Pledgee provides written notice of its desire to contest a sanction before it is imposed pursuant to Rule 22 shall not apply to a case where the Corporation summarily suspends and closes the accounts of a Participant or Pledgee pursuant to the Securities Exchange Act of 1934 as amended.

Rule 22—Right To Contest Decisions

Sec. 1 A Participant or Pledgee or an applicant to become a Participant or Pledgee (hereinafter in any case in this Rule referred to as the "Interested Person"), shall have the opportunity to be heard on any decision of the Corporation:

(a) Which proposes to deny the applicant's application to become a Participant or a Pledgee; or

(b) To cease to act for the Participant pursuant to Rule 10, 11 or 12; or

(c) To summarily suspend and close the accounts of a Participant or Pledgee pursuant to the Securities Exchange Act of 1934 as amended; or

(d) To terminate its agreement with the Pledgee provided for in Section 3 of Rule 2; or

(e) Which proposes to impose a disciplinary sanction pursuant to Rule 21.

Section 2. An Interested Person may request an opportunity to be heard by filing with the Corporation, within the applicable time period specified by these Rules, a written request for a hearing setting forth (i) the action or proposed action of the Corporation with respect to which the hearing is requested, (ii) a copy of the statement sent by the Corporation describing the action or proposed action and (iii) the name of the Interested Person and its representative who may be contacted with respect to the hearing. Within 7 business days after the Interested Person files such written request with the Corporation, or 3 business days in the case of summary action taken against the Interested Person pursuant to the Securities Exchange Act of 1934, the Interested Person pursuant to the Securities Exchange Act of 1934, the Interested Person shall submit to the Corporation a clear and concise written statement setting forth with particularity the action or porposed action of the Corporation with respect to which the hearing is requested, the basis for objection to such action and whether the Interested Person chooses to be represented by counsel at the hearing. The failure of the Interested Person to file the written request referred to above within the time period required by these Rules and/or the failure of the Interested Person to submit the written statement referred to above within the time period specified above shall constitute a waiver by the Interested Person of its right to a hearing. The Corporation shall notify the Interested Person in writing of the date, place and hour of the hearing at least 5 business days prior to the hearing.

Section 3. The hearing will be before a member or members of a panel (hereinafter the "Panel") selected by the Chairman of the Board from a pool (hereinafter the "Pool") of persons employed or suggested by Participants or the Corporation. Persons shall be appointed Members of the Pool by the Board of Directors or the Chairman of the Board. Unless otherwise stipulated by all parties, including the Corporation, the Panel shall be comprised of the following number of members:

(i) Hearing relating to fines of $5,000 or less—one Panel member;

(ii) Hearings other than those specified in (i) above—at least two Panel members.

Notwithstanding the above, the Panel shall not include any person who had responsibility for the action or proposed action of the Corporation as to which the hearing relates.

Sec. 4. At the hearing, the Interested Person shall be afforded an opportunity to be heard and may be represented by counsel if the Interested Person has so elected pursuant to Rule 22, Sec. 2(iii). A record shall be kept of any hearing held pursuant to this Rule, and the cost of the record may, in the discretion of the Panel, be charged in whole or in part to the Interested Person in the event that the decision at the hearing is adverse to the Interested Person.

Sec. 5. The Panel shall advise the Interested Person of its decision in writing within 10 business days after the conclusion of the hearing. If the decision of the Panel shall have been to deny the Interested Person's application to become a Participant or a Pledgee a notice of decision setting forth the specific grounds upon which the decision is based shall be furnished to the Interested Person. If the decision of the Panel shall have been to impose a disciplinary sanction on the Interested Person in accordance with Rule 21 or to affirm any summary action previously taken against the Interested Person pursuant to the Securities Exchange Act of 1934 as amended, a notice of decision setting forth (i) any act or practice in which the Interested Person has been found to have engaged, or which the Interested Person has been found to have omitted, (ii) the specific provision(s) of the Rules or Procedures of the Corporation or of the Participant's agreements with the Corporation which any such act or practice or omission to act has been deemed to violate, and (iii) the sanction imposed and the reasons therefor shall be furnished to the Interested Person. Decisions of the Panel are final, but the Board of Directors may in its discretion modify any sanction or reverse any decision of the Panel.

Sec. 6. The reversal or modification at the hearing or subsequently by the Board of Directors, the Securities and Exchange Commission or any other person of any action previously taken against the Interested Person pursuant to the Securities Exchange Act of 1934 shall not invalidate the acts of the Corporation or its officers, directors, employees or agents taken prior to such reversal or modification.

Sec. 7. Any action or proposed action of the Corporation as to which an Interested Person has the right to be heard pursuant to Rule 22 shall be deemed final (i) when the Interested Person stipulates to the taking of such action by the Corporation, at which time the Corporation shall furnish the Interested Person with a statement containing the information referred to in Section 5 of this Rule, or (ii) upon the expiration of the applicable time period provided in these Rules for the filing of a written request or a written statement pursuant to Section 2 of this Rule, at which time any such proposed action of the Corporation shall become final and at which time the Corporation shall furnish the Interested Person with a statement containing the information referred to in Section 5 of this Rule, or (iii) if a hearing has been held pursuant to Rule 22, when the Corporation gives notice to the Interested Person of the Panel's decision pursuant to Section 5 of this Rule.

Sec. 8. A Panel may at any time establish procedures for a hearing not otherwise provided for by these Rules with respect to any action or proposed action of the Corporation.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by DTC's Board of Directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC has adopted the proposed rule change so that its Rules will be in confirmity with sections 17A(b)(3)(G), 17A(b)(3)(H), and 17A(b)(5) of the Securities Exchange Act of 1934, as amended (the "Act").

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will equitably allocate fees among DTC Participants.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not requested comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Stret, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizaiton. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 15, 1985.
John Wheeler,
Secretary.
[FR Doc. 85-28005 Filed 11-22-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-22630; File No. SR-PHLX 85-28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Election of Stop and Stop Limit Option Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 4, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 1066(a) No change.
(b) No change.
(c)(1) No change.
(c)(2) No change.
(c)(3) A stop order and a stop limit order in option contracts shall also be elected by a quotation, as follows. A stop order to buy shall become a market order when the bid price in the options series is at or above the stop price, after the order is represented in the trading crowd. A stop order to sell shall become a market order when the offer price in the option series is at or below the stop price, after the order is represented in the trading crowd.

A stop limit order to buy shall become a limit order executable at the limit price or a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the trading crowd.

A stop limit order to sell shall become a limit order executable at the limit price or at a better price, if obtainable, when the offer price in the option series is at or below the stop price, after the order is represented in the trading crowd.

No stop order or stop limit order elected by a quotation may be executed without prior approval of a Floor Official.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Since the beginning of the Exchange's options program, option specialists have been permitted to accept stop orders and stop limit orders. A stop order to buy (sell) is an order left on the specialist's book which becomes a market order when a transaction in the security occurs at or above (below) the stop price. A stop limit order to buy (sell) is an order left on the specialist's book which becomes a limit order executable at the limit price or at a better price when a transaction in a security occurs at or above (below) the stop price. When a transaction in the security occurs at the appropriate stop or stop limit price, the stop or stop limit order is deemed "elected".

Stop and stop limit orders may serve to minimize losses should the market move adversely to an investor's position and may be useful in other strategies as well.

However, under present Exchange rules, the effectiveness of stop and stop limit orders has been curtailed when such orders have been used in connection with inactive option series (e.g., options which are deep-in-the-money). If the value of an option increases or decreases substantially (based upon movement in the underlying security), but no transaction takes place in the option, the quoted market for the option may go through the stop or stop limit price. In such situation, the order would not be elected. Thus, the order would remain unexecuted on the specialist's book and the desired price protection would not be achieved.

To alleviate this situation, the Exchange proposes that stop and stop limit option orders be elected by a quotation as well as by a transaction. This means that a stop or stop limit order that has been left on the specialist's book will become a market or limit order, respectively, when the quoted market for the option reaches the appropriate bid or offer price, as specified in the text of the proposed rule change in Item I.

The proposal provides that the executive of all stop and stop limit orders elected by a quotation must be approved by a Floor Official. This will protect against the possibility of a specialist electing a stop or stop limit order to exacerbate price movements in the option.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by extending the utility of stop and stop limit orders to minimize investors' losses. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission previously has approved substantially identical proposals by the American [1] and New York [2] Stock Exchanges and has not

[1] *See* Securities Exchange Act Release No. 22240 (July 15, 1985), 50 FR 29778 (File No. SR-Amex-84-41).

[2] *See* Securities Exchange Act Release No. 22495 (October 2, 1985), 50 FR 41082 (File No. SR-NYSE-85-32).

received any adverse comments on those rule changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 15, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28006 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23912; 70-7183]

American Electric Power Co., Inc., et al.; Proposal to Issue Guarantee and Obtain Letters of Credit on Behalf of Subsidiary and for Subsidiary to Obtain Letters of Credit

November 18, 1985.

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned service company, American Electric Power Service Corporation ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration with the Commission subject to sections 6(a), 7, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act").

AEPSC renders various management and other services to the AEP System Companies, including the procurement of virtually all required insurance protection for these companies. AEPSC is required to provide Pacific Employers Insurance Company ("Pacific") and Insurance Company of North America ("INA") with either a letter of credit or a surety bond in order to secure certain unfunded liabilities associated with a workmen's compensation program with Pacific and a general and automobile liability insurance program with INA. By order dated June 22, 1978 (HCAR No. 20597), AEP was authorized to guarantee AEPSC's performance in order for it to obtain such letters of credit or surety bonds in favor of INA. It was further provided that the maximum amount of paid public liability losses which may be reimbursed to INA by AEPSC and, as a result, the maximum amount of such letter of credit or bond of indemnity under the general automobile liability insurance program, could not exceed $7.5 million.

Under the workmen's compensation program, the AEPSC proposes to provide Pacific directly with a letter of credit or surety bond in order to secure the unpaid portion of the deposit premium. It is projected by the AEPSC that the amount of unpaid deposit premiums which it will be called upon to secure through the use of a letter of credit or surety bond during the years 1986–1989 are $3,345,000, $4,377,000, and $5,775,000, respectively, and that the maximum amount of such letter of credit or surety bond shall not exceed $10,000,000.

In regards to the General and Automobile Liability Program, the AEPSC projects that the probable amounts of public liability losses to be reimbursed by it to INA during the years 1986–1989 are $11,403,000, $16,370,000, and $20,840,000, respectively. It is proposed herein that the limitation of $7,500,000, approved in 1937, be increased to $21,000,000 so that the AEPSC may provide the required letter of credit to INA.

It may be necessary that AEP continue to guarantee the obligations of the AEPSC with respect to such letters of credit or surety bonds, or, in the alternative, obtain such letters of credit or surety bonds itself on behalf of the AEPSC. Approval is hereby sought for AEP to continue to undertake these actions on behalf of the AEPSC.

On October 1, 1980, the AEPSC instituted a group medical plan with Aetna (the "Split-Funded Plan"). The Split-Funded Plan provides coverage for certain medical expenses for covered employees, and the premium for such coverage is determined upon a split-funded retrospective rating basis.

The AEPSC proposes to provide Aetna with a letter of credit in its favor in an amount not less than 120% of what the AEPSC's conventional reserve level would have been under the conventional arrangement, discussed in the declaration, as projected annually by Aetna based upon audits and paid claims adjustments. Such letter of credit could be drawn upon by Aetna, should, among other reasons, the Split-Funded Plan terminate and the AEPSC not make arrangements for meeting future liabilities on a basis satisfactory to Aetna. For the year 1985, Aetna has projected the conventional reserve level to be $10,665,600, which under the letter of credit provision, would require the AEPSC to provide a letter of credit in the amount of $13,332,000. Moreover, in the foreseeable future, it is anticipated that the conventional reserve level will remain relatively stable and therefore the maximum level of letter of credit the AEPSC may obtain in favor of Aetna will not exceed $20,000,000.

It may be necessary for AEP to guarantee the performance of the AEPSC in order for it to obtain such letter credit. In such instance, no charge would be made by AEP for such guarantee. In the alternative, it may be necessary that AEP itself obtain such letter of credit on behalf of the AEPSC in which instance AEP will bill the AEPSC for any cost thereof. Approval is hereby sought for AEP to undertake these actions on behalf of the AEPSC.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-28004 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14798/File No. 812-6113]

Application and Opportunity for Hearing; IDS Life Insurance Co. et al.

November 18, 1985.

Notice is hereby given that IDS Life Insurance Company ("IDS Life"), a stock life insurance company organized under the laws of the State of Minnesota, and IDS Life Variable Life Separate Account (the "Account"), a separate account of IDS Life registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust (collectively, "Applicants"), filed an application on May 10, 1985, and amendments thereto on October 16, 1985, and November 8, 1985, pursuant to section 6(c) of the Act, for an order of exemption from sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2), 27(d), and 27(f) of the Act, and Rules 6e-2(b)(1), 6e-2(b)(12), 6e-2(b)(13), 6e-2(c)(1), 6e-2(c)(4), 22c-1, and 27f-1 thereunder, to the extent necessary to permit Applicants to offer the single premium variable life insurance policy ("the Contract") described in the Application. Applicants represent that they will file a final amendment for clarification purposes subsequent to this notice but prior to an order being granted. All interested persons are referred to the Application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act and the Rules thereunder for a statement of the relevant statutory provisions.

Applicants represent that the Account was established for the purpose of funding Contracts issued by IDS Life. Each subaccount of the Account is invested in a corresponding portfolio of IDS Life Series Fund, Inc. (the "Fund"), a series fund registered under the Act as an open-end investment management company. The portfolios consist of the Money Market Portfolio, the Income Portfolio, the Equity Portfolio, the Managed Portfolio, and the Government Securities Portfolio.

Custodianship

Applicants request an exemption from sections 26(a) and 27(c)(2) of the Act and Rule 6e-2 to the extent necessary to permit the Account to hold shares of the Fund under an open account arrangement without the use of stock certificates and without IDS Life acting as trustee pursuant to a trust indenture. The Commission has recently proposed to amend rule 6e-2(b)(13)(iii) [1] to permit the relief requested, subject to certain conditions. Applicants represent that they will meet the conditions of the proposed amendments, i.e., that the life insurer complies with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations.

Sales Charge

No sales charge is deducted from the single premium payment; however, Applicants state that IDS Life will use a contingent deferred sales charge ("CDSL") to recover certain expenses relating to the sale of the Contract, including commissions paid to sales personnel, and other promotional and selling expenses. Applicants state that the surrender values under the Contract will be adjusted to reflect a charge equal to 8% of the Contract's cash value in the first contract year, declining by 1% each year thereafter until the charge is 1% in the eighth Contract year and 0% in all succeeding Contract years. Applicants represent that the CDSL will not exceed 9% of the single premium. It will apply only upon the full surrender of a Contract. Applicants further state that this charge will affect the cash surrrender value of the Contract, as well as the amount available for Contract loans and that it will not affect the amounts that can be transferred among the subaccounts, the subaccounts' investment performance, a contractholder's voting interest, or the Contract's death benefits.

Applicants assert that their deferred sales load benefits the public, is more advantageous to the investor than a front-end load, and is consistent with the essential purpose of variable life insurance. Applicants submit that a CDSL will generally provide higher cash surrender values and a generally greater death benefit than a front-end sales charge since more money is at work for the contractholder from the start of the contract. Applicants assert that Rule 6e-2 can be read as only contemplating sales loads imposed upon a premium payment, and Applicants seek exemptive relief in order to avoid any question regarding complete compliance with the Act and rules thereunder.

Applicants asset that section 2(a)(35) contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made, and that a CDSL many not be encompassed by the definition of sales load in Rule 6e-2, paragraphs (b)(1) and (c)(4). Applicants seek exemptive relief from those provisions to permit the imposition of a CDSL on the grounds, *inter alia*, that the timing of the CDSL does not change its essential nature. Applicants also seek exemptive relief from sections 2(a)(32), 27(c)(1), 27(d) and Rule 6e-2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redemption. Applicants submit that the contracts are redeemable securities, whether the sales charge is imposed at the time of purchase or whether such charge is deferred and made contingent upon an occurrence at a later time.

With respect to section 22(c) and Rule 22c-1, Applicants assert that Rule 6e-2(b)(12) affords exemptive relief from those provisions with respect to redemption procedures, which include surrender and exchange provisions in the context of variable life insurance, and that Rule 6e-2(b)(12) could be read as being premised on the absence of a CDSL. Applicants state that their CDSL would in no way have the dilutive effet which Rule 22c-1 was designed to prohibit, that variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was aimed against, and that a CDSL would discourage rather than encourage any such trading.

Applicants request exemption from Rule 6e-2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary for this provision to be deemed to apply to the structure of cash surrender values under the Applicants' Contract.

Cost of Insurance Charge

Applicants assert that the exemptive relief provided by Rule 6e-2(b)(13)(iii) is broad enough to permit a deduction from the Account for the cost of insurance charge. Nevertheless,

[1] *See* Investment Company Act Rel. No. 14421, March 15, 1985.

Applicants request exemption from sections 26(a)(2) and 27(c)(2) of the Act.

Applicants state that the Contract is structured so that the cost of insurance charge is deducted monthly based on the net amount at risk commensurate with the risks under each Contract. Applicants argue that this method of deduction increases the amount invested on behalf of contractowners. Applicants believe that it is more equitable, and beneficial to contract holders to deduct the cost of insurance charge on an ongoing basis directly from each contract rather than to deduct it from the single premium. Applicants state that any such deduction from the single premium would be a large one, accompanied by a significant risk charge, based on necessary assumptions about the length of time the contract would be in force, the investment performance of the various subaccounts, how the contractholder would allocate monies among the subaccounts, and the other factors necessary to determine the net amount at risk over the life of the contract.

Guaranteed Death Benefit Risk Charge

Applicants state that IDS Life deducts from the Amount a minimum death benefit guarantee risk charge equal, on an annual basis, to .15 percent of the daily net asset value of the subaccounts. Applicants state that this charge is to compensate IDS Life for the risk it assumes by providing a guaranteed minimum death benefit, i.e., by guaranteeing that the death benefit will never be less than the death benefit at the time the Contract was issued, absent contract loans. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit this deduction.

In accordance with the provisions of proposed paragraph (b)(13)(iii)(F) of Rule 6e-2, Applicants represent that they have reviewed the level of the minimum death benefit guarantee charge under comparable scheduled premium variable life insurance contracts currently being offered and that the charges under the Contracts are within the range of industry practice for comparable contracts. Applicants further represent that IDS Life will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, IDS Life's comparative survey. Applicants state that they do not believe that the CDSL being imposed under the Contracts will cover the expected costs of distributing the Contracts. IDS Life has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Account and the contractholders and represents that a memorandum setting forth the basis for this representation will be maintained at IDS Life's home office and available to the Commission. Applicants further represent that the Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b-1 under the Act to finance distribution expenses.

Withdrawal Notice

Applicants propose to personally deliver the right of withdrawal notice together with the Contract in certain circumstances, and to furnish notice of such withdrawal right and a Statement of Contract charges on a written document containing information comparable to that required by Form N-271-2. Applicants request exemptions from section 27(f), Rule 27f-1, and Rule 6e-2(b)(13) (viii)(A) and (viii)(C) to permit such a delivery. Applicants state their belief that their notice will be a more effective disclosure document since it will be tailored to the Contracts and that personal delivery conforms to industry practice and is a less costly way of delivering the required notice. Applicants also state that comparable relief has been afforded to flexible premium contracts and has been proposed for scheduled contracts in pending amendments to Rule 6e-2(b)(13)(viii)(A) and (viii)(C).

Section 6(c)

Applicants represent pursuant to section 6(c) that all exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further represent (as will be clarified by the final amendment) that if and to the extent that Rule 6e-2 is amended to provide relief on terms or conditions different from any relief granted to them pursuant to this application, Applicants shall take all necessary steps to comply with amended Rule 6e-2.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail on Applicants at the address stated above. Proof of service (by affidavit or, in the case of any attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-28002 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14799; File No. 812-6216]

Application and Opportunity for Hearing; Pruco Life Insurance Co. et al.

November 18, 1985.

Notice is hereby given that Pruco Life Insurance Company ("Pruco Life"), on its own behalf and as sponsor and depositor of the Pruco Life Variable Insurance Account and the Pruco Life Variable Appreciable Account (the "Arizona Accounts"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey"), on its own behalf and as sponsor and depositor of the Pruco Life of New Jersey Variable Insurance Account and the Pruco Life of New Jersey Variable Appreciable Account (the "New Jersey Accounts"), and The Prudential Insurance Company of America, ("Prudential") (referred to collectively as "Applicants") filed an application on October 1, 1985, and an amendment thereto on November 12, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from certain provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e-2(b) (15) and 6e-3(T) (b) (15) thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions thereof.

Applicants state that Pruco Life is a stock life insurance company organized under the laws of the State of Arizona and Pruco Life of New Jersey is a stock life insurance company organized under the laws of the State of New Jersey. Pruco Life is a wholly-owned subsidiary of Prudential and Pruco Life of New Jersey is a wholly-owned subsidiary of

Pruco Life. The Arizona Accounts and the New Jersey Accounts (together, the "Accounts") are separate investment accounts of Pruco Life and Pruco Life of New Jersey, respectively. Prudential is a mutual life insurance company organized under the laws of the State of New Jersey. Prudential is registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934. Pruco Life and Pruco Life of New Jersey will hereinafter be referred to collectively as the "Company."

The application states that the Company offers and sells scheduled premium variable life insurance contracts funded through the Accounts. Each Account has five subaccounts, each of which invests its assets exclusively in a corresponding Portfolio of the Pruco Life Series Fund, Inc. (the "Series Fund").

Applicants assert that the Accounts are entitled to rely upon the exemptions from the Act provided by Rule 6e–2. Applicants note that subsection (b) (15) of Rule 6e–2 affords exemptions from certain provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act to any unit investment trust, all the assets of which consist of shares of registered management investment companies that offer their shares exclusively to scheduled premium variable life insurance separate accounts of the life insurer or of any affiliated life insurance company. The application states that the Company has filed with the Commission registration statements for a variable annuity contract and a flexible premium variable life insurance contract and that the assets related to these contracts will be held in separate accounts and will be invested in the Series Funds, together with the scheduled premium contracts. Accordingly, Applicants request exemptions from the above-enumerated sections of the Act to the same extent as if Rule 6e–2(b) (15) were applicable.

Applicants assert that denying the relief sought under the conditions proposed would be inconsistent with Rule 6e–3(T) (b) (15), which exempts flexible premium variable life insurance policies from sections 9(a), 13(a), 15(a), and 15(b), notwithstanding that the proceeds of variable annuity contracts and scheduled premium variable life policies will also be invested in the same underlying fund. Moreover, Applicants points out, essentially the same exemptive relief they seek will be provided if proposed amendments to Rule 6e–2(b) (15) are adopted.

In addition, Applicants assert that the Commission has granted similar and virtually identical applications filed by other issuers and that this confirms that the exemptive relief requested satisfies the requirements set forth in section 6(c) of the Act that the exemption is appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of the Act.

Applicants represent that the shares of the Fund will be voted in accordance with the instructions of the owners of the contracts participating in the several separate accounts that invest in Fund shares and that the possibility exists that a conflict might arise between the interests of the owners of the variable annuity contracts and the interests of the owners of the variable life insurance contracts with respect to matters that may be the subject of shareholder voting or otherwise, as detailed in the application. Applicants propose that the exemptive relief they seek be subject to the same conditions as those set forth in Rule 6e–3(T) (b) (15) and in the proposed amendments to Rule 6e–2(b) (15), namely that the board of the directors of the Fund shall have a majority of disinterested directors; that the directors will monitor the Fund for the existence on any material irreconcilable conflict between the interests of variable annuity contractowners and scheduled or flexible life contractowners; that the Company will be responsible for reporting any potential or existing conflicts to the directors; and, if a conflict arises, that the Company will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible life contracts.

Applicants represent that if and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then Applicants shall immediately take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

In addition, Applicants note, Rules 6e–2(b) (15) (ii) and 6e–3(T) (b) (15) (ii) provide that the life insurer issuing scheduled premium contracts shall not be subject to the eligibility requirements of section 9(a) (3) of the Act provided that no affiliated person of the life insurer who is ineligible by reason of paragraphs (1) or (2) of section 9(a) participates in the management or administration of any registered investment company of which the life insurer acts as investment adviser or principal underwriter. Thus, if the exemptions provided by these rules were made available to Applicants, they would permit the Company to serve as investment adviser to the Series Fund even if some employee who does not participate in any way in the administration of the Fund, was ineligible under sections 9(a) (1) or (2). However, Applicants believe this exemption might not extend to Prudential. Prudential, which does not itself issue any variable life insurance contracts, acts as investment adviser to the Series Fund. Applicants assert that although paragraphs (b) (15) of both Rules 6e–2 and 6e–3(T) appear to have been intended to extend to affiliates of the insurer as well as to the insurer itself, they can be read as being limited, in respect to subparagraphs (ii) as providing exemption only to the life insurer. Accordingly, Applicants ask that exemptive relief from Rules 6e–2(b) (15) (ii) and 6e–3(T) (b) (15) (ii) be granted to Prudential to the extent that it serves as investment adviser to the Series Fund.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for his or her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date on order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–28003 Filed 11–22–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC-14802; File No. 812-6178]

Application and Opportunity for Hearing; IDS Life Insurance Co., et al.

November 19, 1985.

Notice is hereby given that IDS Life Insurance Company ("IDS Life"); IDS Life Insurance Company of New York ("IDS Life of New York"); IDS Life Account C ("Account C"), IDS Life Account D ("Account D"), and IDS Life Account E ("Acount E") (collectively, "IDS Life Combining Accounts"); IDS Life Account F ("Account F"), IDS Life Account G ("Account G"), and IDS Life Account H ("Account H") (collectively, "IDS Life Continuing Accounts"); IDS Life of New York Account 1 ("Account 1"), IDS Life of New York Account 2 ("Account 2"), and IDS Life of New York Account 3 ("Account 3") (collectively, "IDS Life of New York Combining Accounts"); IDS Life of New York Account 4 ("Account 4"), IDS Life of New York Account 5 ("Account 5"), and IDS Life of New York Account 6 ("Account 6") (collectively, "IDS Life of New York Continuing Accounts"); and IDS Financial Services, Inc. ("IDS") (hereafter collectively called "Applicants"), at IDS Tower, Minneapolis, Minnesota 55474, filed an application on August 12, 1985, and an amendment thereto on November 18, 1985, requesting an order of the Securities and Exchange Commission ("Commission") exempting Applicants from the provisions of Section 17(a) of the Investment Company Act of 1940 ("Act"), pursuant to Section 17(b) of the Act, to the extent necessary to permit a reorganization involving the combination of certain separate accounts of IDS Life and the combination of certain separate accounts of IDS Life of New York. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act for the text of the relevant sections.

Applicants state that IDS Life, a wholly-owned subsidiary of IDS, is a stock life insurance company organized under Minnesota law, and IDS of New York, also a wholly-owned subsidiary of IDS, is a stock life insurance company organized under New York law. The three accounts forming the IDS Life Combining Accounts are registered under the Act collectively as a single unit investment trust. Similarly, the three accounts forming the IDS Life of New York Continuing Accounts are each registered under the Act collectively as a single unit investment trust. Each of the unit investment trusts has issued and registered as securities under the Securities Act of 1933 various deferred variable annuity contracts. Net purchase payments of the contracts are allocated to one or more of the three segregated asset accounts comprising that unit investment trust, and each account invested exclusively in the shares of one of the following funds ("funds") as follows: Accounts C and 1 invested in Capital Resource Fund I, Accounts D and 2 invested in Special Income Fund I, Accounts F and 4 invested in Capital Resource Fund II, Accounts G and 5 invested in Special Income Fund II, and Accounts E, H, 3, and 6 invested in Moneyshare Fund. Each of the funds was registered under the Act as a diversified, open-end management investment company.

The application states that on July 10, 1985, at their respective annual meetings, a majority of the shareholders of the respective funds (voting in accordance with instructions received from contractowners) approved a proposal to merge the following: Capital Resource Fund I into Capital Resource Fund II (and to change the name of the surviving fund to IDS Life Capital Resource Fund, Inc.) and to merge Special Income Fund I into Special Income Fund II (and to change the name of the surviving fund to IDS Life Special Income Fund, Inc.). Counsel for the Applicants has advised the Commission staff that this merger was consummated on August 30, 1985.

Applicants state that Capital Resource Fund II and Special Income Fund II were used as investment vehicles solely for Accounts F, G, and H and 4, 5, and 6, which were for use in connection with tax-qualified retirement plans. Applicants further state that Capital Resource Fund I and Special Income Fund I were used as investment vehicles solely for Accounts C, D and E and 1, 2, and 3, which were for use in connection with non-qualified plans. Applicants assert that the Tax reform Act of 1984 eliminated the different tax treatment afforded qualified and non-qualified plan investments, and eliminated the reasons for the existence of four Funds. Therefore, the application states, the directors of the Funds determined that the above mergers were in the best interests of the funds' shareholders since they would increase the size of the surviving funds, provide greater investment flexibility for the surviving funds, and simplify business recordkeeping.

Applicants state that subject to the consummation of the mergers of the funds, Applicants propose to reorganize the separate accounts as follows: the shares of Capital Resource Fund II held by Account C will be transferred to Account F, the shares of Capital Resource Fund II held by Account 1 will be transferred to Account 4, the shares of Special Income Fund II held by Account D will be transferred to Account G, the shares of Special Income Fund II held by Account 2 will be transferred to Account 5, and the shares of Moneyshare Fund held by Accounts E and 3 will be transferred to Accounts H and 6, respectively. Applicants submit that the interests of contractowners in Accounts F, G, H, 4, 5, and 6 will be the same as their interests, respectively, in Accounts C, D, E, 1, 2, and 3, before the transfer. Applicants propose to deregister the unit investment trusts containing Accounts C, D, and E, and Accounts 1, 2, and 3.

Applicants submit that IDS Life Combining Accounts and the IDS Life Continuing Accounts, as well as the Combining and Continuing Accounts of IDS Life of New York, may be deemed to be under the common control of IDS Life and IDS Life of New York, respectively. Therefore, Applicants assert, the unit investment trust containing the IDS Life Combining Accounts and the unit investment trust containing the IDS Life of New York Combining Accounts may be deemed to be an affiliated person of the unit investment trust containing the IDS Life Continuing Accounts and the unit investment trust containing the IDS Life of New York Continuing Accounts, respectively. Further, Applicants assert that the proposed reorganization will be effected by a transfer of securities of the various funds so that, in effect, the contractowners will be exchanging their interests in the various Combining Accounts for the interests in the corresponding Continuing Accounts, and this transfer may be deemed to be a purchase and/or sale transaction between affiliated registered investment companies. Accordingly, Applicants request, to the extent necessary, an order of exemption from section 17(a) of the Act, pursuant to section 17(b) thereof.

Applicants assert that the terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each trust, and are consistent with the general purposes of the Act. Applicants assert that because the underlying funds that were merged had identical investment objectives, policies, and restrictions, the corresponding pairs of unit investment trusts proposing to reorganize also must

be deemed to embody identical investment objectives, policies, and restrictions. Further, Applicants represent that the reorganization will result in an exchange of an interest in one account for an interest of equal value in the corresponding account, and that the values of the exchanged interests will be equivalent. Applicants submit that the reorganization will be tax-free with respect to the contractowners, that IDS Life will bear all the expenses associated with the mergers and reorganization, and that no costs will be incurred by the trusts or contractowners as a result of the proposed transactions. Moreover, Applicants assert that there will be no change as a result of the reorganization in the charges, costs, fees, or expenses borne by contractowners. Applicants also assert that the reorganization will be effected without any dilution of contractowners interests, and that contractowners were informed, through disclosure in proxy statements seeking approval of the fund mergers, of the reorganization. Applicants submit that the existing and future contractowners will benefit from the reorganization to the extent it streamlines operations in conformity with the changes effected by the mergers.

Applicants represents that the terms of the proposed reorganization and the transactions constituting the reorganization meet all requirements of section 17(b) of the Act.

Notice is further given that any interested persons wishing to rquest a hearing on the application may, not later than December 11, 1985, at 5:30 p.m., do so by submitting a written requet setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personnally or by mail upon Applicants at the address stated above. proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28009, Filed 11-22-85; 8:45am]

BILLING CODE 8010-01-M

[Release No. IC-14501; File No. 812-5850]

Application and Opportunity for Hearing; The Life Insurance Co. of Virginia et al.

November 19, 1985.

Notice is hereby given that Life Insurance Company of Virginia ("The Company"), Life of Virginia Separate Account I ("Separate Account I"), and Life of Virginia Security Sales, Ltd. ("Security Sales") (referred to collectively herein as "Applicants"), filed on September 16, 1985, an amendment to an application filed on May 15, 1984, which was previously amended on September 13, 1984, March 4, 1985, and March 15, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting certain transactions from the provisions of sections 2(a)(35), 26(a), and 27(c)(2) of the Act, and Rule 6e-3(T) promulgated thereunder, to the extent requested. Applicants received an order from the Commission on April 17, 1985, granting the relief requested in the original application (Investment Company Act Release No. 14475) ("Order"). Applicants filed the instant amendment ("Amendment") pursuant to section 6(c) of the Act, requesting an exemption from the previsions of sections 2(a)(35), 26(a), and 27(c)(2) of the Act and Rule 6e-3(T) promulgated thereunder and amending the prior Order to extend the relief granted in that Order to the extent indicated below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

I. Summary of Previous Relief

The Company is a stock life insurance company organized under the laws of the Commonwealth of Virginia and is admitted to do business in 47 states and the District of Columbia. The Company is the sponsor-depositor for Separate Account I. The Account, a segregated investment "separate account" of the Company, is registered under the Act as a unit investment trust. Separate Account I was established for the purpose of funding flexible premium variable life insurance contracts ("Policies"), as defined in paragraph (c)(1) of Rule 6e-3(T). Security Sales, as defined in paragraph (c)(1) of Rule 6e-3(T). Security Sales, a registered broker-dealer, is the principal underwriter of the Policies.

At the time the original application was filed with the Commission, Separate Account I had one investment subdivision, which invested exclusively in shares representing interests in a separate Portfolio of Life of Virginia Series fund ("Fund"). Accordingly, Applicants offered a policy ("Commonwealth One") which provided for investment of assets solely in this single Portfolio of the Fund. A 6% front-end sales charge and a 2.5% charge for premium taxes are deducted from each premium payment on Commonwealth One. Certain charges are deducted from Separate Account I, including a mortality and expense risk charge at an annual rate of .50% of the net assets of Separate Account I ("risk charge"), and other expenses are reflected in the net earnings of the Fund.

The Order granted an exemption from section 2(a)(35) of the Act and from paragraphs (b)(1) and (c)(4)(ii) of Rule 6e-3(T) with respect to Commonwealth One policies to the extent that paragraph (c)(4)(ii) prescribes that the amount excluded from sales load for cost of insurance is limited to the "cost of insurance for the period based upon the 1980 Commissioners Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule." Applicants sought an exemption to the extent necessary to permit the exclusion of amounts for the actual cost of insurance charges deducted under the Commonwealth One policies, which for standard underwriting risk classes is guaranteed never to exceed amounts based upon the 1958 Commissioners Standards Ordinary Mortality Table and an annual effective interest rate of 4 percent.

Second, the Order granted an exemption from former paragraph (c)(7) of Rule 6e-3(T) to the extent it defined payment for purposes of the sales load provisions of the Act and the rule as excluding that portion of gross premiums charged for substandard risks, incidental insurance benefits, and interest when premiums are paid more frequently than annually.

Finally, the Order granted an exemption from sections 26(a) and 27(c)(2) of the Act to allow a monthly deduction from the cash value of Commonwealth One policies for substandard mortality risk and incidental benefits. Applicants requested such exemption to the extent that the term "cost of insurance" in former paragraph (b)(13)(iii)(E) of Rule 6e-3(T) does not cover deductions for

substandard mortality risk and incidental benefits.

II. Purpose of the Amendment

Subsequent to issuance of the Order, Separate Account I established three additional investment subdivisions, each of which invests exclusively in newly created separate Portfolios of the Fund. For a variety of reasons, upon the effectiveness of these additional Portfolios, a new version of the policy ("Commonwealth Two") was issued to provide for investment of assets in all four Portfolios. Upon approval of Commonwealth Two in a particular jurisdiction, Life of Virginia will cease issuing Commonwealth One policies and will make an "offer of exchange" to all holders of Commonwealth One policies to exchange to a Commonwealth Two policy.

The purpose of the Amendment is to restate and amend the Order to clarify that the relief granted in that Order applies to Commonwealth Two policies. For the reasons set forth in the application and summarized below, Applicants believe that such relief is appropriate.

A. Description of the Policies

Applicants state that both Commonwealth One and Commonwealth Two policies are "flexible premium variable life insurance contracts" as defined in paragraph (c)(1) of Rule 6e–3(T). Applicants repreent that the policies are virtually identical exept for the contractual differences necessary to accommodate the operations of the new investment subdivisions: the allocation of premiums, the calculation of cash values based upon the values allocated to each invetment subdivision, the allocation of the monthly deduction, the effect of partial surrenders on the amounts allocated to the various investment subdivisions, and the allocation of loans and repayment of loans. Applicants assert that the differences between the two policies can be separated into two categories: Substantive changes, and changes in disclosure.

Under the first category, Applicants state that the Commonwealth Two policy provides for the alternative refund provisions allowed by various states and for the initial allocation of premiums to the Money Market Investment Subdivision during the "Free Look Period." However, Applicants state that these would not affect existing policymakers exercising the exchange right because in so exercising virtually all policymakers would have held their policy beyond the Free Look Period. For those few existing policyowners, if any, whose Free Look Period had not expired, it would expire as scheduled.

Under the second category, Applicants state that the Commonwealth Two policy form includes disclosure of certain rights or practices that were previously described elsewhere (in the form or the prospectus) or were followed in practice by Life of Virginia. These changes in disclosure include: A statement on the cover page of the policy form of the maximum loan value of the policy; a redesignation of Death Benefit Options 1 and 2 as B and A, respectively; disclosure that life insurance proceeds paid in one lump sum will include interest from the date of death to the date of payment; deletion of the superfluous words "at any time" from the statement that the Company reserves the right to manage Separate Account I under the direction of a committee; a change in the description of how policy values are calculated from use of a separate account index to a unit value (this has no impact on the amount of values but reflects the actual system currently used); disclosure that the amount payable upon surrender is determined on the date the request is received *in the home office;* and disclosure that the Annual Statement will indicate the policy debt *as of the policy anniversary* (new disclosure underscored).

Applicants believe that the Order is sufficiently broad to cover the Commonwealth One policy and the Commonwealth Two policy. Applicants state that the use of different names and the issuance of a new policy form were done primarily for marketing reasons and to avoid any confusion to policymakers that may result from an extensive policy rider to describe the allocation procedures. Applicants assert that the same changes could have been accomplished through a policy rider. Applicants represent that other than the allocation provisions arising from the creation of additional series, the policies are essentially the same. Thus, for purposes of the exemptive relief obtained, Applicants believe the policies should be considered as one. Applicants assert that the extension of the exemptive relief to the Comonwealth Two policies is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act for the same reasons set forth in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not late than December 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interests, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the reqeuest should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–28010 Filed 11–22–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14797; (File No. 812–6117)]

Narragansett Capital Corp. et al.; Application for Order Concerning Certain Affiliated Transactions

November 15, 1985.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), Narragansett Management Partners ("NMP") and Narragansett First Fund ("First Fund") and Arthur D. Little, Robert D. Manchester, William P. Lane, Gregory P. Barber and Roger A. Vandenberg (collectively, "Individuals" and together with Narragansett, NMP and First Fund, "Applicants") each at 40 Westminster Street, Providence, RI 02903, filed an application on May 16, 1985, and amendments thereto on October 3 and November 13, 1985, for a Commission order pursuant to section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d–1 thereunder permitting certain proposed transactions ("Proposed Transactions") and pursuant to section 17(b) of the Act exempting those transactions from the provision of section 17(a) of the Act. In the Proposed Transactions, First Fund, a limited partnership controlled by Narragansett in which the Individuals have financial interests, would participate with certain persons directly or indirectly affiliated with Narragansett. The Individuals are affiliates of Narragansett because they are associated, either as a shareholder or co-partner, with portfolio companies ("Portfolio Companies") affiliated with Narragansett or Narragansett Venture Corporation ("Venture") (a wholly-

owned subsidiary of Narragansett). All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, Narragansett is a closed-end, non-diversified management investment company registered under the Act. Applicants represent that they sought and received Commission orders pursuant to sections 6(c), 17(b) and 57(c) of the Act exempting them from certain provisions of the Act with respect to the establishment and operation of First Fund and permitting certain proposed transactins involving First Fund pursuant to section 17(d) of the Act and Rule 17d–1 thereunder. *See* Investment Company Act Release Nos. 12347 (Apr. 2, 1982) and 12684 (Sep. 22, 1982) ("Original Orders"). Applicants state that under the Original Orders First Fund was organized with 37 limited partners, including Narragansett, committing capital contributions aggregating $74,650,000 in addition to the general partner's capital contribution of $500,000. Applicants also represent that Narragansett is the sole general partner and the Individuals are the limited partners of NMP, a Rhode Island limited partnership, which is the sole general partner of First Fund ("First Fund GP").

Applicants state that during the past two years Narragansett has made substantial investments in portfolio companies engaged in the cable television business, virtually all of which investments also involved investments by Monroe M. Rifkin ("Rifkin"), Charles R. Morris III ("Morris"), Bruce Paul ("Paul"), Cambridge Venture Partners ("Cambridge") and Rifcam Limited Partnership, a limited partnership of which Rifkin is the general partner and Cambridge is the limited partner ("Rifcam"), each of whom is an "affiliated person" (as defined in section 2(a)(3) of the Act) of certain Portfolio Companies. Further, Rifkin, M&R Associates (a general partnership of which Rifkin and his wife are the sole partners ("M&R")), Peter Smith ("Smith"), Paul A. Bambei ("Bambei"), Roger Seltzer ("Seltzer"), Lucille Maun ("Maun"), June Travis ("Travis") and Morris, are "affiliated persons" of Narragansett because they are co-partners with Narragansett in certain Portfolio Companies. (Rifkin, Morris, Paul, Cambridge, Rifcam, M&R, Smith, Bambei, Seltzer, Travis and Maun are "affiliated persons" of each other and are hereinafter sometimes referred to as the "Rifkin Group"; and Morris, Smith, Bambei, Seltzer, Travis and Maun are hereinafter sometimes referred to as "Key Employees.") Rifkin & Associates, Inc. ("Associates"), a cable television management company owned by Rifkin, manages the Portfolio Companies for a fee based on revenues and is assumed to be an "affiliated person" of Rifkin.

According to Applicants, the Proposed Transactions involve the purchase from Omni Cable TV Corporation ("Omni") of cable television systems located in Georgia, Illinois and Michigan ("Group 1") and in Virginia and West Virginia ("Group 2") by Cable Equities, Inc. ("CEI") (a corporation wholly-owned by Rifkin) pursuant to an agreement ("Sales Agreement") which also permits Omni to sell two other groups ("Groups 2 and 3") of systems to unrelated third parties. Omni is to receive $53 million from the sale of all four groups of systems, subject to certain adjustments. Applicants represent that Omni has an agreement to sell Groups 2 and 3 prior to the closing for the sale of Groups 1 and 2. Applicants represent they understand that they may have to amend this application should the sale of Group 2 or 3 not close as presently contemplated.

According to the application, following the execution of a Letter of Intent on January 16, 1985, to assure the approval of a purchase and sale agreement by the directors and stockholders of Omni, CEI undertook to acquire control of Omni through various transactions involving the purchase of Omni securities. Purchase prices were computed on the basis of a $53 million purchase price for the Omni systems less the estimated cost of the distribution and dissolution of Omni, and were intended to put the Omni stockholders who sold to CEI in the same position they would have been had they held their Omni securities until the Omni assets had been sold and the proceeds distributed. According to Applicants, CEI financed the purchase of the Omni securities through cash (invested by Rifkin) and notes ("CEI Notes").

CEI proposes forthwith upon its purchase of Group 1 to sell these systems for $34 million to a limited partnership (the "Partnership"), of which the general partner will be a corporation owning a 1% interest in the Partnership whose voting stock will be owned 50% by a wholly-owned subsidiary of First Fund at a cost of $81,695 and 50% by and Rifkin and other members of the Rifkin Group at the same cost. The limited partners of the Partnership will be a corporation owned by First Fund (80.9% interest at a cost of $13,218,305), Rifkin (5.6% interest at (a cost of $918,305) and Associates and Key Employees (12.5% interest at reduced or nominal cost). The Partnership has a commitment from an unaffiliated insurance company to lend $23 million, payable ten years from the closing with interest at 12.3%. Applicants contemplate the issuance by the Partnership of limited partnership interests as soon as feasible after the closing to persons unaffiliated with Applicants or any member of the Rifkin Group. The funds received would be used to reduce the equity investments owned by First Fund, Rifkin, Associates, and Key Employees on a pro rata basis, except that the future syndicator of the Partnership may require Rifkin to maintain some equity in the Partnership. There are presently no commitments for the sale of such limited partnership interests.

CEI proposes to retain the system constituting Group 2, to be financed by an $8 million revolving line of credit from an unaffiliated bank, a subordinated loan from First Fund of $3 million, and common stock of $1,800,000. The subordinated loan from First Fund will be unsecured and payable ten years from date with interest at 10% during the first two years, 12% for the next two years and 15% thereafter. (Rifkin may also loan funds to CEI on identical terms. In such event, Rifkin's loan would reduce First Fund's loan dollar for dollar.) The common stock will be owned 80% by First Fund at a cost of $1,750,000 and 20% by Rifkin and Key Employees at an aggregate reduced cost of $50,000.

Applicants submit that the cost of equity to be retained by Rifkin, and to be acquired by Associates and the Key Employees, in the Partnership and CEI is fair and reasonable and does not disadvantage any party to the transaction. Applicants state that the key to a successful leveraged buyout is the competence of the manager of the entity and sufficient financial equity must be given as an incentive to management. Applicants further assert that Narragansett shareholders will ultimately derive greater benefit by investing with experienced entrepreneurs than they would by investing with less experienced entrepreneurs willing to pay full price for their equity. Moreover, Applicants assert that it is customary in the cable industry for management to receive equity interests at reduced or nominal cost.

Applicants contemplate a shareholders' agreement among First Fund and the other stockholders of CEI,

placing restrictions upon the transfer of CEI common stock, granting rights of first refusal with respect to the issuance of additional shares and providing for registration of shares under certain circumstances and for the election of directors. There will be a similar shareholder agreement among the shareholders of the general partner of the Partnership.

If the closing under the Sales Agreement is deferred beyond December 15, 1985, when the CEI Notes become due, First Fund will make a short-term secured loan to CEI to enable it to pay the CEI Notes. This short-term loan will be payable at the closing under the Sales Agreement, will bear interest at 12% and will be secured by a pledge of all of the Omni securities owned by CEI.

Applicants represent that upon closing, Associates and First Fund will receive a financing fee of $770,000 and $70,000 respectively. Applicants assert that these fees are customary and fair in relation to the risks assumed and performed by Associates and First Fund in arranging the acquisition and financing of Omni. Further, Applicants state that such fees are customary in the industry and that First Fund and Associates have received similar fees in transactions previously approved by the Commission. Applicants represent further that Associates and First Fund will be the equity owners of CEI and the Partnership and, thus, will have no incentive to permit the other to obtain an unreasonable fee.

Applicants also state that Associates will operate the Partnership and CEI under management contracts ("Management Contracts") pursuant to which Associates will receive 5% of annual gross revenues. Applicants assert that such fees are customary in the cable industry and reasonable in light of Rifkin's recognized expertise.

Applicants further represent that Narragansett's Investment Review Committee has approved the Proposed Transactions, and that it was ratified by the Board of Directors of Narragansett ("Narragansett Board") at a duly held meeting on September 19, 1985. Applicants assert that the Proposed Transactions would come within the exemptions granted by Rule 17a–6 were it not for the fact that the Individuals each have a financial interest in First Fund through their ownership of limited partnership interests in NMP. The financial interests of the Individuals in NMP and hence in First Fund are well known to the Narragansett Board and were recognized at the time of the issuance of the Original Orders. Applicants represent that the relationship between the Individuals and the shareholders of Narragansett has not changed. Further, in the Original Orders, the Commission recognized that the requirement of approval by the "required majority" of the Narragansett Board would protect the interests of the Narragansett shareholders in the then proposed transactions. Applicants contend that there is no reason to apply a different standard to the Proposed Transactions which will not be consummated unless they receive such approval after full disclosure of the interests of all parties.

Applicants represent that First Fund's limited partnerhsip agreement ("First Fund Partnership Agreement") anticipated the participation of First Fund in transactions with persons such as the Rifkin Group, who are affiliated with Narragansett and, accordingly, provided for protection of the interests of the First Fund limited partners ("First Fund LPs"). Section 4.8 of the First Fund Partnership Agreement expressly authorizes the purchase by First Fund of securities of an entity in which an "affilated person" is an officer, director or shareholder, provided its general partner obtains any required regulatory approval, a favorable recommendation of the Advisory Board and consent of the First Fund LPs. The term "Affiliated Person" in the First Fund Partnership Agreement includes Rifkin because he owns 10% or more of the stock of a company controlled by Narragansett. The "Advisory Board" consists of seven members, four of whom are elected by the First Fund LPs and shall not be "affilaited persons" of Narragansett of the First Fund GP, and three of whom are designated by the First Fund GP. "Consent of the Limited Partners" means the consent of the First Fund LPs whose total percentage interest represents at least 60% of the aggregate percentage interests held by them. Hence, even if the requested order is issued by the Commission, the Proposed Transactions still require a favorable recommendation by the Advisory Board and written consent by the First Fund LPs owning at least 60% of the total limited partnership interests. (Narragansett, which owns a 5.358339% interest, would grant such consent and its interest would be included in the minimum percentage.) Applicants assert that this will insure that the Proposed Transactions are reasonable and fair and do not involve overreaching by any party.

Applicants assert that the Individuals have no incentive to benefit the Rifkin Group or Omni or the holders of Omni securities as opposed to Narragansett or First Fund. Applicants represent that none of the Individuals nor any other persons so affiliated with Narragansett or Venture that they would be included in items (A) through (E) of subparagraph (i) of paragraph (5) of Rule 17d–1(d) will have a direct or indirect financial interest in any person (except for First Fund and Narragansett) who is, was or will be a participant in the Proposed Transactions. Applicants assert further, that none of the Individuals nor any of the other such persons who are affiliated with Narragansett and come within the scope of such Rule have any financial interest, direct or indirect, in any member of the Rifkin Group nor in any of the Portfolio Companies, except through their financial interests in Narragansett or Venture. To the knowledge of Applicants none of Rifkin, Associates or any member of the Rifkin Group has any financial interest in Narragansett (other than possibly as a holder of a nominal amount of Narragansett stock, but in no event does any such person, individually or as a group, own five percent (5%) or more of the outstanding voting securities of Narragansett). Applicants further represent that to their knowledge none of Rifkin, Associates or any member of the Rifkin Group has any direct or indirect financial interest in any company controlled by Narragansett other than as described above.

Applicants represent that as between Associates and the Partnership and CEI, the respective Management Contract will also be negotiated between entities with diverse interests. Applicants further represent that as long as the Management Contracts are in effect, First Fund, together with any syndicator of the Partnership, will not own less of the voting seurities of CEI or of the general partner of the Partnership than Rifkin, Associates, the Rifkin Group or persons similarly associated with Rifkin own in the aggregate. Moreover, the terms of the Management Contract between Associates and the Partnership must be satisfactory to First Fund and to the Partnership's lender.

Applicants assert that each of the other components of the Proposed Transactions are also proceeding at arms-length by sophisticated investors capable of evaluating the Proposed Transactions and of protecting their own interests. To further insure the fairness of the negotiations, all entities have or will be represented by independent counsel of their own choosing.

Applicants assert that in making their determinations, the Narragansett Board, the Advisory Board and the First Fund LPs were or will be advised of the financial interests of the Individuals in

NMP. Narragansett, as the general partner of NMP, and its directors have a fiduciary relationship to the First Fund LPs, as well as to the Narragansett shareholders. Applicants further assert that any investments of First Fund approved by the Narragansett Board will be considered from the point of view of the benefits to the Narragansett shareholders and not with a view to the benefits accruing to the Rifkin Group. Applicants state that Narragansett and the Individuals will participate in the investment by First Fund through their percentage interest in NMP as described in the underlying applications for the Original Orders and that Narragansett will also participate as a First Fund LP. The Proposed Transactions will make no change in any of those relationships.

As stated in the Original Orders, the relationships established among Narragansett, the Individuals and First Fund are designed to achieve a balance between Narragansett's shareholders and the Individuals that is consistent with the provisions, policies and purposes of the Act. the participation by Rifkin and the Key Employees in the Proposed Transactions may be different from that of First Fund and, hence, from the indirect participation by Narragansett and the First Fund LPs. However, Applicants assert that these differences were negotiated at arms-length and are reasonable and fair under the circumstances and in light of the objectives of the parties. Otherwise, they would not receive approval of the "required majority" of the Narragansett Board and the Advisory Board nor would they receive the required consent of the First Fund LPs. Applicants state that there was and in each case will be full disclosure of all pertinent facts.

Applicants submit that on the basis of the matters and considerations described above the order requested herein in appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Further, Applicants submit that the terms of their participation in the Proposed Transactions are reasonable and fair, do not involve overreaching on the part of any person concerned and are consistent with the policies of Narragansett as recited in its registration statement and reports filed with the Commission. Applicants also submit that while the participation of Rifkin, Associates and the Rifkin Group (including Key Employees) may be different as between each party and First Fund, based upon all the facts and circumstances as described above the participation by First Fund (and thus Narragansett) in the Proposed Transactions is not on a basis less advantageous than that of any other participant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28011 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23907; 70-7187]

Columbus and Southern Ohio Electric Co.; Proposed Acquisition of Note

November 15, 1985.

Columbus and Southern Ohio Electric Company ("C&SOE"), an electric utility subsidiary of American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

By orders dated April 15, 1983 and September 17, 1984 (HCAR Nos. 22913 and 23422, respectively) the Commission previously authorized C&SOE to sell to undermined non-affiliated purchasers certain gas turbine generating units and certain associated equipment.

C&SOE will enter into an agreement to arrange for the sale of one 40 megawatt TP4-2DF Twin Pac Turbojet Generating Unit (the "40 Megawatt Unit") and certain associated equipment, which is leased by C&SOE, and will sell two 27 Megawatt Westinghouse Model 301 gas turbine units, to International Systems Incorporated ("International Systems") for a total consideration of $1,900,000. C&SOE has agreed to pay certain additional costs (estimated to be approximately $2,062,000 to terminate the lease of such equipment. As a result of the sale and termination of the lease of the 40 Megawatt unit equipment, C&SOE will avoid certain future lease payments and personal property taxes such that these avoided costs will approximately equal the difference between the $1,900,000 consideration received for such equipment and the amounts paid to terminate the lease.

In consideration for C&SOE's payment of certain additional costs and as one of the provisions of the sale, C&SOE proposes to acquire a note without interest in the amount of $1,999,000 ("Note"). The maturity date of the Note will be 18 months from the date of transfer of title from C&SOE to International Systems. C&SOE requests authorization to acquire the Note in connection with the sale.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1985, to the Secretary, Securities and Exchange Commission Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28014 Filed 11-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14800-IC; (File No. 813-66)]

Hughes Aircraft Company et al., Application for Order Exempting Employees' Securities Company From All Provisions of the Act (With Certain Exceptions) and Granting Confidential Treatment for Certain Reports

November 19, 1985.

Notice is hereby given that Hughes Aircraft Company ("Hughes"), Hughes Aircraft Company Long-Term Incentive

Plan ("Plan") and Hughes Aircraft Company Long-Term Incentive Plan Trust ("Trust") (collectively, "Applicants"), each at 200 North Sepulveda Boulevard, El Segunda, CA 90425, filed an application on March 5, 1985, and amendments thereto on August 21 and October 31, 1985, for a Commission order pursuant to section 6(b) of the Investment Company Act of 1940 ("Act"), exempting the Plan and Trust from all provisions of the Act except sections 9, 17 (with certain exceptions), 30 (with certain exceptions), 36 and 37 and the rules and regulations thereunder necessary to implement the foregoing. Applicants also request an order pursuant to section 45(a) of the Act granting confidential treatment for certain reports to be filed with the Commission. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicants represent that Hughes is a world leader in the development and production of advanced electronics systems, equipment and components for military, commercial and scientific use. Hughes and its subsidiaries employ more than 70,000 persons, including over 63,000 in California. Applicants state that the Plan was duly adopted and approved to provide additional incentive for executives and key managers to remain with Hughes in the event of its sale to a third-party purchaser (other than a sale preceded by a public offering of Hughes' common stock). Applicants further state that during the pendency of this application an agreement was entered into between Hughes' sole stockholder and General Motors Corporation for the sale of Hughes.

Applicants represent that participants ("Participants") in the Plan are approximately 960 Hughes' employees consisting of the Chairman and Chief Executive Officer, the President, the Vice Chairman, the Executive Vice President and 24 other executive officers ("Key Officers"), approximately 80 Vice Presidents and Division Managers and approximately 850 other high-level managers, substantially all of whom receive total annual compensation from Hughes of more than $70,000. Further, Applicants represent that the Key Officers are financially sophisticated and are "accredited investors" pursuant to Rule 501(a) under Regulation D of the Securities Act of 1933 (except one individual whose income has exceeded the standard of Rule 501(a) for only one year). Applicants who represent that the Key Officers, by reason of their employment with Hughes, have considerable financial sophistication.

Pursuant to the Plan, non-transferable beneficial interests ("Units") in the Trust have been awarded by Hughes' Board of Directors to Participants based on such factors as present and potential contributions to Hughes. No commitments or payments are required or allowed for the Units; however, the Key Officers rescinded their rights to certain severance payments as a condition of their participation in the Plan. According to the application, Hughes and Security Pacific National Bank ("Trustee") have entered into a trust agreement pursuant to the Plan and Hughes has deposited $10,000 into the Trust. Upon the sale of Hughes, there will be deposited into the Trust five percent of the consideration received by the seller subject to a maximum of $250 million.

Applicants represent that the Trust and Trustee will be subject to the supervision and direction of a trust management committee ("Committee") comprised of certain Key Officers. Committee members will be initially selected by Hughes and will receive no separate remuneration for their supervision of the Trust. Applicants represent further that the Committee will, among other things, have the power to review records and reports of the Trustee, direct the investment of Trust assets and appoint an investment adviser. According to the application the investment activity of the Trust will be aimed at preserving principal and obtaining long-term growth.

Applicants state that for tax purposes the income of the Trust will be income to Hughes. Further, the assets of the Trust will be subject to the debts and liabilities of Hughes in the event of bankruptcy. Applicants represent that Hughes will pay most of the operating expenses of the Trust, including Trustee, adviser, counsel and distribution fees. Applicants state that the Trust will pay for the expenses of investment activity, such as brokers' commissions, and will distribute quarterly to Hughes an amount equal to the tax liability of Hughes resulting from Trust income. All other Trust assets will be available for payment to Participants according to the schedule set forth in the Plan not than five years from the date of the awarding of the Units.

Applicants state that the Trustee is responsible for making payments to Participants. Subject to certain risks and of forfeiture and acceleration as described in the application, Participants will receive cash payments equal to one-third of their respective Units on the third, fourth and fifth anniversary dates of the awarding of the Units. The value of each Unit at the time of payment will be equal to the quotient obtained by dividing the assets of the Trust by the total number of Units outstanding.

Applicants do not concede that either the Plan or Trust is an investment company under the Act. In any event, pursuant to section 6(b) of the Act, Applicants request that the Plan and the Trust be exempted from the provisions of the Act (with certain exemptions) as an "employees' securities company" as defined in section 2(a)(13) of the Act. In support of their request, Applicants assert that the interests of Participants will be protected adequately without the coverage of the Act since other federal and state regulatory authority are applicable to the Plan and Trust. Applicants further assert that the Committee has the authority to supervise and direct the Trust and will exercise this authority to protect the interests of Participants in order to ensure their welfare. The Trust will be operated for a limited period of time, automatically terminating when Participants receive their last secheduled payment. Applicants state that through conservative investment methods, the Trust will be subject to very little risk of investment loss. Further, Applicants represent that Participants will receive an audited annual report apprising them of the investment policy and performance of the Trust and will also receive timely notification of any change in the Trust's investment policy.

In light of the above, Applicants submit that section 17(a) of the Act should not be applied to preclude the investment of assets of the Trust in the securities of Hughes' purchaser or its affiliates or in securities or other investment vehicles of entities in which affiliates of the Trust maintain investments. In addition, Applicants seek an exemption from section 17(a) to allow investment of Trust assets in securities of entities in which Committee members, Hughes, the purchaser, or their affiliates, hold more than five percent of the outstanding securities. Applicants agree that section 17(a) will still preclude the Trust from engaging in any transactions (other than those involving the securities of Hughes' purchaser or its affiliates) with entities in which Committee members own a "controlling" interest (as described in section 2(a)(9) of the Act). Applicants

believe that these exemptions from section 17(a) are consistent with the protection of Participants' interests in the Trust because due to the community of interests between Committee members and other Participants, there is no likelihood that Trust assets will be invested in vehicles chosen because of interests conflicting with those of Participants. Further, Applicants represent that no investments otherwise barred by section 17(a) will be made unless the Committee determines that the terms of the transaction are reasonable and fair and do not involve overreaching and are of substantially the same type and on the same, comparable or more favorable terms than those available to the public or other unaffiliated investors. Such determinations will be made and recorded in compliance with sections 57(f)(3) and 57(h) of the Act. Applicants also represent that no brokers' commissions or expenses for the foregoing transactions will be paid to an affiliate.

While not conceding that section 17(d) of the Act would preclude the Committee from relying on investment advice from market analysts employed by Hughes to select investment vehicles for Hughes' various pension and deferred compensation plans, Applicants request an exemption from section 17(d) to allow the Trustee to make investments in accordance with such advice. Applicants believe the Act should not be applied to preclude the Committee from relying on such a resource or to preclude the Trust from making investments so selected simply because the Trust and Hughes' pension and deferred compensation plans at times may make parallel investments. Applicants represent that any such parallel investments will be made only after the Committee determines that such transactions are fair and reasonable to Participants and do not involve overreaching by any of the parties involved. The Applicants likewise seek an exemption from section 17(d) to the extent it would preclude Hughes from covering certain expenses of the Trust and the Trust from making certain payments to Hughes as described above.

Applicants also request an exemption from section 17(g) of the Act to the extent necessary to permit the Trust to comply with Rule 17g–1 without having a majority of the Committee who are not "interested persons" take such action and make such approvals as set forth in Rule 17g–1. Applicants represent that the Trust will otherwise comply with Rule 17g–1. Further, Applicants request a limited exemption from section 17(j) of the Act alleging that the requirements of Rule 17j–1(b)–(d) would pose an unwarranted burden on them. Applicants allege that such an exemption is consistent with the protection of Participants' interests because the Committee members are also Participants and the Trust assets will be held by the Trustee. Applicants agree, however, to be fully bound by the provisions of Rule 17j–1(a).

Additionally, Applicants request an exemption from section 30 of the Act to the extent necessary to allow them to distribute to Participants annual rather than semi-annual reports of the Trust. Applicants submit that sections 30(a)–(c) of the Act are inapplicable because of the limited number of Participants and the non-transferability of the Units. Applicants represent that annual reports to Participants will be audited as required by section 30(e) of the Act and copies thereof will be filed with the Commission. Based on the foregoing, Applicants further request that such filings be afforded confidential treatment under section 45(a) of the Act. Confidential treatment is requested since there will be no public trading of the Units and the only persons interested in such information would have received all such data directly from the Trust. Consequently, Applicants submit that such a grant of confidential treatment would be consistent with the protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commisson, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–28015 Filed 11–22–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22633; File No. SR–PSE–85–31]

Pacific Stock Exchange; Self-Regulatory Organization; Proposed Rule Change

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Decision by the Board of Governors of the Pacific Stock Exchange to amend several of its rules so that they will correspond to the earlier opening time (6:30 a.m., Pacific Time) approved by the Securities and Exchange Commission in September, 1985, based on a rule filing (File No. SR–PSE–85–23) submitted by the PSE on August 30, 1985. No substantive change in the intent of the affected rules will be made, but simply a re-wording of their current language so as to correspond their function to the new opening time.

Pursuant to Section 19(b)(1) of the Securities. Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on November 7, 1985, the Pacific Stock Exchange, Inc., ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rules which are the subject of the proposed rule filing contain specific time provisions which correspond and relate to a 7:00 a.m. opening. The proposed amendments to these rules do not change the intent of the rules, but merely alter their time provisions to correspond to the 6:30 a.m. opening time which has already been approved by the Commission in September, 1985.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes which are the subject of the submitted rule filing are made in coordination with the recent approval by the Commission of a rule filing (File No. SR–PSE–85–23) submitted by the PSE on August 30, 1985, pertaining to a request by the PSE to allow it to open for the transaction of business at 6:30 a.m. instead of 7:00 a.m. The rules described in the filing contain specific time provisions relating to a 7:00 a.m. opening time. The submitted changes will make the rules correspond to a 6:30 a.m. time without changing their substantive intent. These changes will correspond to the dictates of Section 6 of the Securities Exchange Act of 1934 (the "Act"), in that it will allow the PSE to maintain its rules and procedures within the effectiveness and coordination of the national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furthermore of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received or solicited concerning the proposal to rephrase rules affected by the establishment of an earlier opening time for the Exchange trading floors.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–28098 Filed 11–22–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Baltimore Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Blatimore, Maryland, will hold a public meeting at 9:00 a.m. on Tuesday, December 10, 1985, at the University of Baltimore, Board Room, 1304 St. Paul Street, Baltimore, Maryland 21202, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202—(301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 19, 1985.

[FR Doc. 85–28050 Filed 11–22–85; 8:45 am]

BILLING CODE 8025–01–M

North Carolina Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Charlotte, North Carolina, will hold a public meeting at 9:30 a.m. on Tuesday, December 10, 1985, at the Greensboro Area Chamber of Commerce, Conference Room, 217 North Greene Street, Greensboro, N.C. 27402, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Northwestern Bank Building, Suite 700, 230 South Tryon Street, Charlotte, N.C. 28202, telephone number area code (704) 371–6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 19, 1985.

[FR Doc. 85–28051 Filed 11–12–85; 8:45 am]

BILLING CODE 8025–01–M

Providence Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, December 18, 1985, at Winkler's Steak House, 63 Washington Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 380 Westminster Mall, Providence, Rhode Island 02903. Telephone number (401) 528–4562.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 19, 1985.

[FR Doc. 85–28052 Filed 11–22–85; 8:45 am]

BILLING CODE 8025–01–M

Seattle Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Seattle, Washington, will hold a public meeting at 9:00 a.m. on Monday, December 16, 1985, at the Seattle Sheraton Hotel & Towers, 1400 Sixth Avenue, Room 416 (4th Floor), Seattle, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, 915 Second Avenue, Room 1792, Seattle, Washington 98174 (206) 442-5534.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 19, 1985.

[FR Doc. 85-28053 Filed 11-22-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2216; Amendment #1]

Louisiana; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 47317), issued in accordance with the President's declaration of November 1, 1985, is hereby amended to include the Parishes of Livingston and St. Tammany and the adjacent Parishes of Tangipahoa, Ascension, Plaquemines and Ward 9 of Orleans Parish because of damage from Hurricane Juan beginning on or about October 27, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on January 2, 1986, and for economic injury until the close of business on August 1, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 8, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-28054 Filed 11-22-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

[Docket No. IP85-17; Notice 1]

American Jawa Limited; Receipt of Petition for Determination of Inconsequential Noncompliance

American Jawa Limited of Plainview, Long Island, New York, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.115, *Vehicle Identification Number*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.2 of Federal Motor Vehicle Safety Standard 115, *Vehicle Identification Number*, states that each vehicle identification number (VIN) shall consist of seventeen (17) characters.

In 1983, American Jawa Limited became aware that their 1981 and 1982 mopeds, imported for sale in the United States, did not comply with Federal Motor Vehicle Standard No. 115 *Vehicle Identification Number*. The "VIN" number consisted of a six digit serial number which ranged from 330,000 to 440,000, and were not received in any particular sequential order. The vehicles consisted of 11,488 mopeds in total, of which 2,264 units were the Jawa Supreme, a deluxe model.

All VINs on the 1984 and 1985 models have been corrected to the full seventeen digit number, and have been submitted to the VIN coordinator of the National Highway Traffic Safety Administration. There was no production during model year 1983.

The petitioner stated "that they did not try to ignore any Federal standard or regulation, and it was due only to communication problems."

Interested persons are invited to submit written data, views and arguments on the petition of American Jawa Limited, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washigton, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 26, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: November 19, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-27984 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent application for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582-X	DOT-E 2582	Union Carbide Corp., Danbury, CT	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT specification 3E1800, with certain exceptions. Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3187-P	DOT-E 3187	Silor Optical of Florida, Inc., St. Petersburg, FL.	49 CFR 173.119(m), 173.21(b), 173.218, 173.221(a)(3).	To become a party to exemption 3187. (Mode 1.)
4453-P	DOT-E 4453	Hilltop Energy, Inc., Lisbon, OH	49 CFR 173.114a(h)(3)	To become a party to exemption 4453. (Mode 1.)
4453-X	DOT-E 4453	Wampum Supplies Co., New Galilee, PA	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Wampum Hardware Co., New Galilee, PA	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-P	DOT-E 4453	Stockdale and Means Explosives, Inc., Frostburg, PA.	49 CFR 173.114a(h)(3)	To become a party to exemption 4453. (Mode 1.)
4453-X	DOT-E 4453	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Strawn Explosives, Inc., Dallas, TX	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Kentucky Powder Co., Lexington, KY	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Austin Powder Co., Cleveland, OH	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Belmont Mine Supply Co., Inc., Flushing, OH.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Armstrong Explosives Co., New Galilee, PA.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	A.M. Contracting, Grove City, PA	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Wampum Manufacturing Co., New Galilee, PA.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Alamo Explosives Co., Inc., Houston, TX	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-X	DOT-E 4453	Ireco Inc., Salt Lake City, UT	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4453-P	DOT-E 4453	Explosives, Inc., Clarksburg, WV	49 CFR 173.114a(h)(3)	To become a party to exemption 4453. (Mode 1.)
4990-P	DOT-E 4990	Joseph E. Seagram & Sons, Inc., New York, NY	49 CFR 173.125	To become a party to exemption 4990. (Mode 2.)
5206-P	DOT-E 5206	Austin Sales, Inc., Vansant, VA	49 CFR 173.114a	To become a party to exemption 5206. (Mode 1.)
5649-P	DOT-E 5649	Olin Chemicals, Stamford, CT	49 CFR 173.154(a)	To become a party to exemption 5649. (Modes 1, 2.)
5704-P	DOT-E 5704	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704. (Modes 1, 2, 3.)
6296-P	DOT-E 6296	Rhone-Poulenc Inc., Monmouth Junction, NJ.	49 CFR 173.377(g)	To become a party to exemption 6296. (Modes 1, 2.)
6614-P	DOT-E 6614	GLD Distributors, Inc., Fairport, NY	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614. (Mode 1.)
6614-X	DOT-E 6614	Hasa Chemicals, Inc., Saugus, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	All Pure Chemical Co., Tracy, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6670-P	DOT-E 6670	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(d), 173.302	To become a party to exemption 6670. (Mode 1.)
6752-P	DOT-E 6752	3M, St. Paul, MN	49 CFR 173.301(d)(3), 173.304(a)(2)	To become a party to exemption 6752. (Modes 1, 2, 3.)
6762-P	DOT-E 6762	Sherrill Associates, Homewood, IL	49 CFR 173.286(b)(2), 175.3	To become a party to exemption 6762. (Modes 1, 2, 3, 4.)
6769-X	DOT-E 6769	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314, 173.315	To authorize transport of trifluoromethane, in insulated DOT specification MC-331 tank motor vehicles, and DOT specification 105A600W tank cars. (Modes 1, 2.)
6902-X	DOT-E 6902	Halocarbon Products Corp., Hackensack, NJ.	49 CFR 173.341(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
7052-P	DOT-E 7052	ACR Electronics, Inc., Hollywood, FL	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4.)
7071-X	DOT-E 7071	Philip A. Hunt Chemical Corp., West Paterson, NJ.	49 CFR 172.101, 173.245, 175.3	To authorize shipment of a certain corrosive liquid, in non-DOT specification polyethylene bottles overpacked in a non-DOT specification single-wall fiberboard box, or DOT Specification 2U polyethylene containers overpacked in a DOT specification 12P fiberboard box. (Modes 1, 2, 3, 4.)
7741-X	DOT-E 7741	Bell Aerospace Textron, Buffalo, NY	49 CFR 173.276(a), 173.302(a), 173.34(d), 175.3, 175.30.	To renew and to authorize an alternate type tank assembly. (Modes 1, 3, 4.)
7808-P	DOT-E 7808	Cline-Buckner, Inc., Cerritos, CA	49 CFR 173.304, 175.3, 178.33a	To become a party to exemption 7808. (Modes 1, 2, 3, 4.)
7835-P	DOT-E 7835	National Welders, Charlotte, NC	49 CFR 177.848, part 107 appen. B(1)	To become a party to exemption 7835. (Mode 1.)
7835-X	DOT-E 7835	Airco Industrial Gases, Riverton, NJ	49 CFR 177.848, part 107 appen. B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas lable, the oxidizer label, flammable liquid label, corrosive label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835-X	DOT-E 7835	Lincoln Big Three, Inc., Baton Rouge, LA	49 CFR 177.848, part 107 appen. B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, flammable liquid label, corrosive label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7835-X	DOT-E 7835	Big Three Industries, Inc., Houston, TX	49 CFR 177.848, part 107 appen. B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, flammable liquid label, corrosive label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
8074-P	DOT-E 8074	Airco, the BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.34(d)	To become a party to exemption 8074. (Modes 1, 2, 3, 4, 5.)
8175-X	DOT-E 8175	The Norac Co., Inc., Azusa, CA	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benzoyl peroxide, wet, in a plastic lined DOT specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
8238-P	DOT-E 8238	Speciality Metals & Minerals, Inc., Baton Rouge, LA.	49 CFR 173.368	Request party status and to authorize highway as additional mode of transportation. (Modes 1, 2.)
8244-X	DOT-E 8244	Halliburton Services, Inc., Duncan, OK	49 CFR 173.119, 173.125, 173.245, 173.263, 173.264, 173.269, 46 CFR 64.9.	To authorize use of a DOT specification marine portable tank, for shipment of certain flammable liquids, corrosive materials and combustible liquids. (Modes 1, 3.)
8308-P	DOT-E 8308	Customized Transportation, Inc., Jacksonville, FL.	49 CFR 177.842(a), 177.842(b)	To become a party to exemption 8308. (Mode 1.)
8445-P	DOT-E 8445	ECOFLO, Inc., Tuxedo, MD	49 CFR Part 173, subpart D, E, F, & H	To become a party to exemption 8445. (Mode 1.)
8465-X	DOT-E 8465	Chase Bag Co., Oak Brook, IL	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize use of a 6.0 mil nominal duplex triextruded plastic valve bag of 100 pound capacity, for shipment of a sodium nitrate mixture. (Modes 1, 2, 3.)
8519-P	DOT-E 8519	Hoegh Ugland Auto Liners A/S, Oslo, Norway.	49 CFR 176.905(L)	To become a party to exemption 8519. (Mode 3.)
8554-P	DOT-E 8554	Atlas Powder Co., Dallas, TX	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554. (Mode 1.)
8564-X	DOT-E 8564	Eaton Corp., Westlake Village, CA	49 CFR 173.206, 173.247	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 3.)
8601-X	DOT-E 8601	Aluminum Co. of America, Pittsburgh, PA	49 CFR 173.333	To authorize transport of containers containing aluminum chloride contaminated with phosgene, in non-DOT specification stainless steel portable tanks; and semi-bulk bags. (Modes 1, 2, 3.)
8698-X	DOT-E 8698	Union Carbide Corp., Danbury, CT	49 CFR 173.320, 176.76	To authorize manufacture, marking and sale of non-DOT specification portable tanks, for transportation of liquid nitrogen. (Mode 3.)
8706-X	DOT-E 8706	Prairie State Equipment, Inc., Sioux Falls, SD.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8716-X	DOT-E 8716	Foote Mineral Co., Exton, PA	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8723-P	DOT-E 8723	Atlas Powder Co., Dallas, TX	49 CFR 173.114a(b)(3)	To become a party to exemption 8723. (Mode 1.)
8772-X	DOT-E 8772	Akzo Chemie America, Chicago, IL	49 CFR 172.101 column 6(b)	To authorize an increase in the net quantity limitation, not exceeding five gallons per package, for shipment of certain corrosive liquids and flammable liquids that are corrosive, when shipped via cargo-only aircraft. (Mode 4.)
8814-X	DOT-E 8814	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 175.3	To renew and to modify the formula criteria and to modify data for cylinders over 4 feet in length. (Modes 1, 2, 3, 4.)
8838-P	DOT-E 8838	Olin Corp., Stamford, CT	49 CFR 173.217(a)(4), 178.224	To become a party to exemption 8838. (Modes 1, 2, 3.)
8874-X	DOT-E 8874	Justus Enterprises of Kansas, Inc., Chanute, KS.	49 CFR 173.119, 173.121, 173.273, 173.302, 173.304, 173.328, 173.332, 173.333, 173.336, 173.337, 173.346, 175.3, 178.46.	To authorize additional compressed gases for shipment in non-DOT specification aluminum cylinders. (Modes 1, 2, 3, 4, 5.)
8888-X	DOT-E 8888	Nalco Chemical Co., Oak Brook, IL	49 CFR 172.101 column 6(b), 173.119, 173.245(a)(17), 175.30.	To authorize additional cleaning or water treating compounds. (Mode 4.)
9016-X	DOT-E 9016	Van Leer Verpackungen, GmbH, Hamburg, West Germany.	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 110 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9041-P	DOT-E 9041	Ireco Inc., Salt Lake City, UT	49 CFR 173.100(bb), 175.30	To become a party to exemption 9041. (Modes 1, 4.)
9043-X	DOT-E 9043	Ozella Harrington Trucking Co., Benson, AZ.	49 CFR 173.154(a)(18)	To authorize shipment of ammonium nitrate solution, classed as an oxidizer in a DOT specification MC-306 stainless steel insulated cargo tanks modified to DOT specification 307 cargo tanks. (Mode 1.)
9058-X	DOT-E 9058	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 173.304(a), 173.34(d), 175.3	To authorize use of a non-DOT specification pressure vessel, for transportation of certain flammable gases. (Modes 1, 4.)
9082-X	DOT-E 9082	Union Carbide Corp., Danbury, CT	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2,200 pounds each. (Modes 1, 3.)
9082-X	DOT-E 9082	Union Carbide Agricultural Products Co., Inc., Danbury, CT.	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2,200 pounds each. (Modes 1, 3.)
9108-X	DOT-E 9108	Austin Powder Co., Cleveland, OH	49 CFR 173.77	To authorize transport of potaerythrite tetranitrate wet with 25 percent water in plastic bags in 4 mil polyethylene bags, placed in a DOT specification 12H65 fiberboard box. (Mode 1.)
9120-X	DOT-E 9120	Dresser Industries, Inc., Houston, TX	49 CFR 173.304(a), 173.34(d), 175.3	To authorize use of a non-DOT specification pressure vessel, for transportation of certain flammable gases. (Modes 1, 2, 3, 4.)
9144-X	DOT-E 9144	Cajun Bag & Supply Co., Crowley, LA	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To authorize coated magnesium granules, classed as flammable solid, as an additional commodity. (Modes 1, 2.)
9184-P	DOT-E 9184	Airco Carbide, Louisville, KY	49 CFR 173.178	To become a party to exemption 9184. (Modes 1, 2.)
9329-P	DOT-E 9329	Geo Vann, Inc., Kenai, AL	49 CFR 172.101, column 6, 173.110, 173.80, 175.30.	To become a party to exemption 9329. (Mode 4.)
9332-X	DOT-E 9332	Engelhard Corp., Edison, NJ	49 CFR 172.101, 173.150, 175.3	Request an increase of an ammonia solution containing up to a maximum 11% (as platinum) of a soluable explosive plantinum salt classed flammable solid. (Modes 1, 2, 4.)
9425-X	DOT-E 9425	American Chemical & Refining Co., Inc., Waterbury, CT.	49 CFR 177.848	To authorize sodium, potassium and calcium hydroxide solutions classed as corrosive materials as additional commodities. (Mode 1.)

New Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9352-N	DOT-E 9352	Maloney Pipeline Systems, Inc., Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of flammable liquids and flammable gases. (Mode 1.)
9409-N	DOT-E 9409	Westinghouse Electric Corp., Madison, PA.	49 CFR 173.206, 178.245	To authorize use of non-DOT specification portable tanks, for shipment of a flammable solid. (Mode 1.)
9421-N	DOT-E 9421	Taylor-Wharton, Division of Harsco Corp., Harrisburg, PA; Union Carbide Corp., Danbury, CT.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 173.37, 175.3.	To authorize manufacture, marking and sale of a non-DOT specification steel cylinder complying in part with DOT specification 3AA specification, for transportation certain flammable and nonflammable gasses. (Modes 1, 2, 3, 4.)
9424-N	DOT-E 9424	VTG Vereinigte Tanklager und Transportmittel, GmbH, Hamburg, West Germany.	49 CFR 173.315, 178.245	To authorize use of a non-DOT specification IMO type 5 portable tank, for transportation liquefied compressed gases. (Modes 1, 2, 3.)
9441-N	DOT-E 9441	Amtrol, Inc., West Warwick, RI	49 CFR 173.306(g)(1), part 173, subpart D, E.	To authorize manufacture, marking and sale of non-DOT specification steel water pump system tanks with outside diameter not exceeding 26 inches, for transportation of nonflammable gases. (Modes 1, 2, 3.)

Emergency Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8465-X	DOT-E 8465	C-I-L Inc., Brampton, Ontario, Canada PA.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, 3.)
EE 9531-N	DOT-E 9531	Nalco Chemical Co., Oak Brook, IL	49 CFR 173.32(a)(1)	To authorize filling and discharge of DOT specification 57 portable tanks while remaining on the motor vehicle used as a cargo tank. (Mode 1.)
EE 9532-N	DOT-E 9532	Transamerica Airlines, Oakland, CA	49 CFR 172.101 column 6b, 175.30	To authorize a one-time shipment of rocket ammunition and other explosives. (Mode 4.)
EE 9542-N	DOT-E 9542	Northern Electric Co., Chicago, IL	49 CFR 173.302	To authorize shipment of sulfur hexafluoride in non-DOT specification steel cylinders. (Mode 1.)

Withdrawals

Application No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
8667-P	U.S. Department of Energy, Washington, D.C.	49 CFR 173.416, 175.3	To become a party to Exemption 8667. (Modes 1, 3, 4.)

Denials

9322-N Request by Jones Chemicals, Inc., Caledonia, NY to authorize shipment of hypochlorite solution, classed as a corrosive material in DOT Specification 60, rubber lined portable tank denied October 1, 1985.

9448-N Request by W.R. Grace & Co., Baltimore, MD to authorize shipment of a flammable solid, n.o.s. in metal drums comparable to DOT Specification 6B except they are equipped with a venting device denied October 31, 1985.

Issued in Washington, DC, on November 18, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 85-28047 Filed 11-22-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 227
Monday, November 25, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, December 2, 1985, 1:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. Briefings by the Offices of General Counsel and Program Operations
3. Annual Report on the Employment of Minorities, Women and Handicapped Individuals in the Federal Government for Fiscal Year 1983

Closed

1. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commision also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Mattews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: November 20, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued November 20, 1985.

[FR Doc. 28137 Filed 11-21-85; 12:29 pm]

BILLING CODE 6750-06-M

2

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of December 1985, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia, on December 2, 1985, 8:30 a.m. to 4:30 p.m.; December 3, 1985, 8:30 a.m. to 4:30 p.m.; and December 4, 1985, 8:30 a.m. to Noon.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Monday, December 2, 1985

*1. Executive Session
2. Approval of Minutes
3. Review of Agenda
4. Reports of Board Members
5. Governor's Report
   (a) Director-at-Large Recommendations
   (b) Instructions for Board Upon Receipt of Legal Papers
   (c) Review of Governor's Performance Evaluation Process
   (d) Recommendation—Federal Board 1986 Planning Conference
   **(e) Status of Litigation Cases Involving the FCA
*6. Report of Director, Office of Internal Audit (Executive Session)
***7. Status Report on Legislative Initiative

Tuesday, December 3, 1985

***8. Status Report on Legislative Initiative—Continued
9. Office of Examination and Supervision Report
   *** (a) Status Report on Serious Problem Banks
   *** (b) FCA Supervisory Reports
   (c) Report on Examination Manual Project
10. Regulation Changes
   Final
   Summary of Comments Received on Section 611.1145, Inter-System Transfer of Funds and Equities
   Part 620—Disclosure to Shareholders Requirements
   Part 621—Accounting and Reporting Requirements

Wednesday, December 4, 1985

11. Office of Administration Report
   (a) Status Report on Request for Supplemental Budget—Fiscal Year 1986
   (b) Economic Report
   (c) Legislative Report
   (d) Budget Performance Report
12. FCS Building Association
13. Other Items

*Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(2)
**Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(10)
***Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9)

Dated: November 21, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-28113 Filed 11-21-85; 10:21 am]

BILLING CODE 6705-01-M

3

FEDERAL DEPOSIT CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is herby given that at its open meeting held at 2:00 p.m. on Monday, November 18, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsection (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Application of The Citizens Banking Company, Salineville, Ohio, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in The Jefferson Building and Savings Company, Steubenville, Ohio, a non-federally insured institution, and for consent to establish the two offices of The Jefferson Building and Savings Company as branches of The Citizens Banking Company.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,360–NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

Memorandum regarding a proposal to obtain new computer and request for supplemental funding.

Memorandum regarding a request for funding for equipment.

Memorandum regarding a supplemental budget request.

Resolution commemorating former Chairman of the Board of Directors William M. Isaac's services to the FDIC.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 20, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85–28135 Filed 11–21–84; 12:29 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 18, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,365–L
United American Bank in Knoxville, Knoxville, Tennessee, and
City and County Bank of Knox County, Knoxville, Tennessee, and
United Southern Bank of Nashville, Nashville, Tennessee, and
City and County Bank of Roane County, Kingston, Tennessee, and
First Peoples Bank of Washington County (formerly City and County Bank of Washington County)
Johnson City, Tennessee, and
First Commerce Bank of Hawkins County, Rogersville, Tennessee, and
City and County Bank of Jefferson County, White Pine, Tennessee

Notice of acquisition of control (name and location of bank and name of acquiring party authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii))).

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: November 20, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85–28136 Filed 11–21–84 12:29 pm]

BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 47497, November 18, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 20, 1985, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

M–7—RM85–1–000 (Parts A–D), Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Hadson Gas Systems, Inc.)

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–28127 Filed 11–21–85; 10:42 am]

BILLING CODE 6717-02-M

6

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 47325, November 15, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 20, 1985.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting with less than one week's advance notice to the public: Regulation G issues.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–28112 Filed 11–21–85; 10:21 am]

BILLING CODE 6210-01-M

7

POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its

Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, December 2, 1985, in Washington, DC, and at 8:30 a.m. on Tuesday, December 3, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the December 2 meeting is closed to public observation. The December 3 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At it meeting on November 4, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for December 2. (See 50 FR 46859, November 13, 1985.)

Agenda

Monday Session

December 2, 1985—1:00 p.m. (Closed)

1. Consideration of Filing with Postal Rate Commission on Third-Class Sacking Requirements.

Tuesday Session

December 3, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 4–5, 1985.
2. Remarks of the Postmaster General.
3. Officer Compensation.
4. Consideration of Rates for Preferred Rate Mail.
5. Consideration of the FY 1985 Financial Statements.
   (The Board will review the audited financial statements and footnotes for the Postal Service for FY 1985.)
6. Appointment of Independent Outside Auditors.
7. Postal Service Budget Program.
   (Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's budget for FY 1987, as it is proposed for transmission to OMB and the Congress, for the approval of the Board.)
8. Annual Report of the Postmaster General.
   (The Board will consider the Annual Report of the Postmaster General to the Board concerning the operation of the Postal Service, as required by 39 U.S.C. 2402. Upon arrival thereof, or after making such changes as it considers appropriate, the Board is to transmit this record to the President and the Congress. Ms. Layton, Assistant Postmaster General, Public and Employee Communications Department, will present the proposed Annual Report for for Fiscal Year 1985.)
9. Annual Comprehensive Statement to Congress.
   (Pub. L. 94–421 amended 39 U.S.C. 2401(g) to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committee of the Congress having cognizance over postal matters. The Comprehensive Statement is to describe the plans and policies of the Postal Reorganization Act; postal operations generally and financial summaries and projections. Mr. Johnstone, Assistant Postmaster General, Government Relations Department, will present the proposed Comprehensive Statement for the Board's approval.)
10. Discussion of H.R. 2909 proposing an Office of Inspector General within the Postal Service.
11. Chief Inspector's Report on Consumer Protection.
    (Pub. L. 98–186).
    (The Board will review the semi-annual report on consumer protection distributed to the Board in advance of the meeting in accordance with section 3013, title 39, United States Code.)
12. Progress Report on EEO/Affirmative Action.
    (Mr. Charters, Assistant Postmaster General, Employee Relations Department, will brief the Board on the progress of the EEO/Affirmative Action program.)
13. Consideration of Tentative Agenda for the January 6–7, 1986, meeting in Washington, DC.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 85–28148 Filed 11–21–85; 8:45 am]

BILLING CODE 7710–12–M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 25, 1985.

An open meeting will be held on Tuesday, November 26, 1985, at 10:00 a.m., in Room 1C30 to consider the following item.

The Commission will meet with the invited representatives from the business, financial, legal and academic communities, to discuss issues raised by recent judicial and other takeover developments. The issues to be addressed include, but will not be limited to, open market and privately negotiated acquisition programs, discriminatory tender offers, two pier and partial offers, "junk" bond financings, "poison pill" securities, recapitalization and other defense responses. Further information, please contact Joseph Connolly, Jr. at (202) 272–3097.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alay Dye at (202) 272–2014.

Dated: November 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–28097 Filed 11–20–85; 4:16 pm]

BILLING CODE 8010–01–M

federal register

Monday
November 25, 1985

Part II

Department of Energy

18 CFR Part 271

Ceiling Prices; Old Gas Pricing Structure; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

18 CFR Part 271

Ceiling Prices; Old Gas Pricing Structure

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 403 of the Department of Energy Organization Act (DOE Act), the Secretary of Energy (Secretary) is proposing a rule for final action by the Federal Energy Regulatory Commission (Commission). The Secretary is proposing the Commission exercise its authority: (1) Under sections 104 and 106 of the Natural Gas Policy Act (NGPA), to establish just and reasonable prices for "flowing" old gas, and (2) under section 107 of the NGPA, to establish incentive prices for certain categories of old gas. Under the proposal, the Commission would act to eliminate vintaging and replace the current myriad of old gas ceiling prices with a single ceiling price (the ceiling price for post-1974 gas). In addition, the Commission would establish incentive prices for certain categories of old gas, in order to increase significantly the production of old gas and to encourage long-term investment in natural gas exploration, development, and production. Under both proposed actions, a producer would receive a price higher than the current price only if a purchaser agreed to the higher price. The Secretary is requesting the Commission take final action on this proposal by June 1, 1986.

The Department of Energy (DOE) believes the proposed actions are necessary to mitigate the waste, economic inefficiency, and market distortions existing in the current natural gas market. DOE believes the proposal would result in about 34 trillion cubic feet (Tcf) of additional old gas production and benefit the American economy by more than $25 billion during the next decade.

DATES: Commission to take final action by June 1, 1986. Dates for comments and public hearings to be published later by the Federal Energy Regulatory Commission.

FOR FURTHER INFORMATION CONTACT:

James White or Ben McRae, Division of Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667

Stephen Minihan, Director, Division of Oil and Gas Analysis, Office of Policy, Planning and Analysis, U.S. Department of Energy, Room 7H–034, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6423

SUPPLEMENTARY INFORMATION:

I. Introduction

Approximately half of America's natural gas production is still subject to a woefully outmoded price structure, which has been in place without change since passage of the NGPA. As a result, American consumers are paying too much for natural gas, as much as 44 Tcf of old gas reserves (almost two years supply at current consumption rates) will never be produced, imports of both oil and gas are higher than necessary, and U.S. energy security and the trade balance are weakened.

The existing price structure for old gas creates a barrier against the production of tens of trillions of cubic feet of old gas reserves, even though these reserves are easier and less expensive to produce than other gas sources. The artificially low prices imposed on old gas by the existing price structure prevents us from producing all our economically recoverable old gas supplies. As a result, Americans are consuming gas from more expensive sources, as well as imported oil and gas, instead of first consuming inexpensive old gas. America should produce all its economical gas resources, but it should produce its least expensive gas first. The Department estimates that greater recovery of domestic old gas resources would provide the U.S. economy with economic benefits of over $25 billion during the next decade. The benefits would result from greater economic efficiency, higher domestic gas production, and lower payments for gas and oil imports.

The problems of the natural gas market today are well known. The Commission has recently been in the forefront of the effort to deal with them. In issuing its new omnibus transportation rule, the Commission recognized the need to reform practices that had long since ceased to match the realities of the marketplace. DOE is proposing a new just and reasonable ceiling price for flowing old gas and incentive prices for certain categories of old gas as integral companions to the Docket No. RM 85–1–000 rule. Moreover, DOE does not believe the Commission should adopt the "blockbilling" proposal in Docket No. RM 85–1–000 without taking concurrent action on these proposed reforms of the existing old gas price control structure.

DOE believes legislative decontrol would be the best solution for problems created by the existing old gas pricing structure. However, in the absence of legislative decontrol, the Commission has a responsibility to ensure that old gas price controls best serve the interests of consumers and producers. The Commission has ample authority to reform the existing old gas price control structure to eliminate much of the waste, economic inefficiency, and market distortion caused by the current structure. DOE is proposing the Commission exercise that authority.

II. Discussion

A. Just and Reasonable Prices

1. Legal Authority

a. *Deference to Commission's Exercise of Its Authority.* After the

Natural Gas Act (NGA) was passed in 1938,[1] the Federal Power Commission (FPC) used a wide variety of methods to set rates for old gas. The courts consistently accorded great deference to the exercise of the Commission's expertise, grounded on its knowledge of the natural gas industry, its sensitivity to gas consumer interests, and its understanding of the changing problems of the natural gas markets. So long as the end result reached by the Commission in a ratemaking was reasonable, was based on substantial evidence in the record, and did not exceed the Commission's jurisdiction, the courts did not interfere with the exercise of the Commission's ratemaking authority.[2]

b. *Zone of Reasonableness.* The courts have emphasized repeatedly their lack of authority "to set aside any rate adopted by the Commission which is within a 'zone of reasonableness.' "[3] This zone has been defined quite broadly so as "to integrate costs factors with non-cost and policy considerations." [4] The zone can grow in accordance with factors such as replacement costs, commodity costs of alternative fuels, and competition.

c. *Vintaging.* [5] Never have the courts ever suggested the NGA commanded the Commission to adopt vintaging for old gas rates. On the contrary, the courts repeatedly emphasized the Commission's flexibility and discretion in dealing with the challenges it faced in natural gas ratemakings.[6] As far as vintaging was concerned, the courts upheld the Commission when it vintaged old gas rates, even when the categories were as many in number and as varied in price as the rates existing today,[7] when the Commission adopted only a single rate for all old gas,[8] and when it adopted a rate for old gas that would collapse its ceiling price with that of new gas as contracts for old gas rolled over.[9] Vintaging or not vintaging old gas rates was thus a particular ratemaking method entrusted by Congress to the Commission's administrative discretion, as long as the other conditions for passing judicial review were met.

d. *Responsiveness to Current Conditions.* The courts disfavor mechanical ratemakings.[10] The courts have urged the Commission to take into account such factors as "supply, demand, reserves or industry structure" in establishing just and reasonable rates.[11] The Commission must face up squarely to the problems in the current market and make the pragmatic adjustments necessary to resolve those problems.[12]

e. *Impact of NGPA.* Congress did not reduce the discretion of the Commission to set rates for old gas when it passed the NGPA. Instead, it expressly confirmed the continued authority of the Commission to conduct such ratemakings [13] and rejected attempts to restrict the Commission's authority or discretion in this regard. Thus, the Commission not only has the authority, but also the responsibility, entrusted by Congress, to keep old gas rates just and reasonable under current market conditions.

2. Applicability of Legal Standard to Current Conditions

The proposed action is consistent with historic Commission actions to establish just and reasonable prices. Indeed, the reasons for making these necessary and long overdue rate changes are more compelling now than they were in prior rulemakings to establish just and reasonable prices.

a. *Need to Update Rates.* Ceiling prices for old gas should be updated to reflect current market realities. The economic data and information concerning replacement costs, commodity costs, supply and demand, natural gas markets, conservation factors, consumer interests, and other factors that were taken into account in formulating the current rates have been overtaken by intervening events. The Commission has never exercised its authority to set just and reasonable rates for old gas under the NGPA.[14] Escalators built into the rates for old gas by the NGPA have been wholly inadequate to offset the growing obsolescence of the information used to fashion those rates.

Continuing to adhere to the present structure of old gas rates is a mechanical approach in light of such factors as the rising replacement cost of natural gas, increases in the prices of competing fuels and decontrolled natural gas, and changes in the natural gas market place brought on by passage of the NGPA.[15] As the Commission has recognized in Order No. 436, a rate is not necessarily just and reasonable merely because it has been in effect for a long time.

b. *Sharing of Replacement Costs.* The present system of vintaged rates for old gas fails to assign a reasonable share of the replacement cost of exploring for and developing new gas supplies to the purchasers of many categories of old gas. As a result, there has evolved what has been called a "gargantuan inequity" in the rising discrimination between customers of old and new gas.[16] Since the ratemakings were conducted that established the current system of ceiling prices for old gas, the cost of finding replacement supplies, including discovering and exploring for new supplies of gas, as well as reworking old fields and wells, has soared. Consumers of old gas today pay only a fraction of the cost of this effort even though they benefit enormously from the producer's efforts to replace our dwindling old gas supplies.

Moreover, in the current natural gas marketplace, consumers no longer benefit from holding old gas prices so low. Doing so always hurt their interests in secure and adequate long-term natural gas supplies. As discussed in section II–C, the adverse consequences to consumers from the artificially low ceiling prices for old gas are not offset by lower overall prices to consumers for natural gas.

c. *The Zone of Reasonableness Has Increased Since the Last Ratemaking.*

---

[1] 15 U.S.C. 717 *et seq.*

[2] *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[3] *Permian Basin Area Rate Cases*, 390 U.S. at 797.

[4] *The Second National Natural Gas Rate Cases*, 567 F.2d 1016, 1030 (D.C. Cir. 1977); *see also FPC v. Conway*, 426 U.S. 271 (1976); *Mobil Oil Corp. v. FPC*, 417 U.S. 283 (1974).

[5] Vintaging refers to the system under which different prices are assigned to old gas on the basis of when production commenced.

[6] *See* note 2, *Supra*; *Shell Oil Co. v. F.P.C.*, 520 F.2d 1061 (5th Cir. 1975), *cert. denied* 426 U.S. 941 (1976).

[7] *E.g., Tenneco Oil Co. v. F.E.R.C.*, 571 F.2d 834 (5th Cir. 1978).

[8] *E.g., Permian Basin Area Rate Cases, supra*; *Mobil Oil Corp. v. F.P.C.*, 417 U.S. 283 (1974).

[9] *Shell Oil Co. v. F.P.C., supra.*

[10] *Southern Louisiana Area Rate Cases v. F.P.C.*, 428 F.2d 407 (5th Cir. 1970), *cert. denied* 400 U.S. 950 (1970).

[11] *Id.* at 418, n. 17.

[12] *Mobil*, 417 U.S. at 322, 329.

[13] NGPA section 104(b)(2) reads as follows:

(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

Compare the language of section 104(b)(2) with H.R. 8444, 95th Cong., 1st Sess., sections 405–407, 413(e)(4)(A), (1977) and S. 1479, 95th Cong., 1st Sess., sections 405, 406, 408(d), (1977).

[14] It has been 9 years since the last national ratemaking was completed. In contrast, the FPC frequently revisited the question of just and reasonable rates for natural gas and had established a biennial cycle of national ratemakings.

[15] 15 U.S.C. 3301–3432.

[16] *Tenneco Oil Co. v. F.E.R.C.*, 571 F.2d at 839.

The prices of competing fuels and gas sold in the free market have risen dramatically since the last ratemaking for old gas. On a Btu equivalent basis, these prices far exceed the ceiling prices for old gas. The Commission should take these changed prices into account in establishing a zone of reasonableness within which the ceiling price for old gas must fall. While there is no one approach to establishing just and reasonable prices, these factors certainly indicate a strong likelihood the existing structure needs revision.

d. *Old Gas Supply Response.* As discussed in section II–B–2, the existing pricing structure discourages the production of a tremendous volume of our old gas supply. The loss of this supply, measured in tens of trillions of cubic feet, benefits neither consumers nor producers and must be considered in judging whether the current structure is just and reasonable.

e. *Unprecedented Disparities in Celing Prices.* A review of the growing disparity between old and new gas prices confirms the imbalance of the present vintaged rate scheme for old gas. The most remarkable fact about the current system of vintaging rates for first sales of natural gas is how unprecedented are the disparities between vintages by historic standards. The historic ratio between new and old gas ceiling prices was less than 1.2 to 1 in the Permian Basin area ratemaking and the first and second Southern Louisiana area ratemakings. By providing for the gradual elimination of vintaging, the first national ratemaking would have reduced the ratio to one to one.

In October 1985, the ratio between the ceiling price of the latest vintage of natural gas whose rates were set under the NGA, post-1974 gas ($2.518), and the ceiling price for flowing gas for large producers ($.511), was about five to one. Since what was formerly "new" gas under the last NGA ratemaking is now "old" gas, it is appropriate to compare the ceiling prices of old gas and the ceiling prices of new gas under the NGPA sections 102, 103, and 107. In October 1985, section 102 gas had a ceiling price of $4.091, section 103(b)(2) gas $3.565, and section 107(c)(5) gas $6.076. The ratios between these ceiling prices and the ceiling price for flowing gas referred to above ($.511) are about eight to one, seven to one, and twelve to one respectively. Comparing the average price at which gas under section 107 has been selling in September 1985 ($4.47) with the ceiling price of the flowing gas yields a ratio of about nine to one.

f. *Simplifying a Complex Rate Structure.* The existing rate structure for old gas is absurdly complex and burdensome. Prices range from $.30 to $2.51 per MMBtu (the oil equivalent of about $1.80 to $15 per barrel). The structure needs simplification. The large number of current vintages for old gas, now consisting of at least 14 different pricing categories, goes against the basic trend of ratemakings under the NGA toward administrative simplicity. For example, the ratemakings for the Permian Basin and Southern Louisiana Areas established a single rate for old gas, while the first national ratemaking would have collapsed all old gas ceiling prices into a single price, the same for new gas, when the contracts for old gas "rolled over."[17]

The current complicated system of vintage rates puts a substantial adminstrative burden on producers, pipelines, consumers, and the Commission in trying to track, account for, and abide by the laws governing the myriad of pricing categories for what is one fungible product. This system is an unnecessary anachronism. It makes no sense except when viewed as an accident of an historic ratemaking process that was ultimately unsuccessful in accomplishing its stated objectives of ensuring an adequate supply of natural gas for consumers at reasonable prices while providing a reasonable return and incentive for producers. It serves no rational economic purpose, and should be eliminated.

g. *Market Distortion Caused by Widely Varying Old Gas Rates.* The present vintaged rate structure and the extreme disparities in ceiling prices it contains cause inefficiencies in the natural gas markets. This is because of the unequal access of pipelines and distributors to various categories of old gas supplies. Access to these supplies is an historic accident, yet a pipeline or distributor with greater access to the lower-priced vintages of old gas enjoys an unfair competitive advantage over pipelines and distributors whose supply mix contains a lesser share of these vintages. This distortion of the competitive situation in the natural gas markets serves no rational economic purpose and should be promptly eliminated.

3. *Economic Criteria for Just and Reasonable Rates*

In proposing blockbilling, the Commission identified four criteria for determining whether a rate was just and reasonable. The Commission applied these criteria to "rolled-in" pricing and found it to be unjust and unreasonable. DOE has applied these criteria to the existing old gas price structure and believes it to be equally unjust and unreasonable.

a. *Efficiency.* The first criteria is that a just and reasonable rate should promote efficient production and consumption of natural gas. The economic conditions for such efficiency are well known. The price for natural gas should reflect the resource cost of producing and distributing that gas. Further, the price should ensure the value a consumer places on an incremental unit corresponds to the cost of producing that unit. Efficiency also requires the price should permit the market to clear, that is, price should be responsive to changes in both supply and demand so that quantities supplied would equal quantities demanded. Moreover, efficient prices should reflect current circumstances, not past circumstances. An efficient price is one that relates current costs with current values.

b. *Fair Competition.* A second condition necessary to achieving a just and reasonable rate is the rates so established should permit "fair" competition. Such competition, whether between producers or between a producer and a competing fuel supplier (either gas, oil or electricity), should reflect the current efficiency with which those suppliers operate.

c. *Non-Wasteful.* A third condition for a just and reasonable rate is the rate should not lead to the wasteful depletion of scarce, non-renewable resources. That is, consumers should not use up supplies of natural gas whose value to them is less than the cost of making those supplies available. At the same time, a just and reasonable price should assure adequate supplies of natural gas at reasonable cost to consumers.

d. *Appropriate to Current Conditions.* Finally, a just and reasonable rate is one appropriate to changing conditions in the natural gas industry. Thus, prices for natural gas should not inhibit the growth of competition envisioned by the NGPA. Nor should prices distort the benefits otherwise obtained from greater access by customers to transportation of natural gas.

e. *Application to Existing Old Gas Pricing Structure.* DOE believes many of the problems the Commission identified as resulting from rolled-in pricing really result from the existing old gas price structure. Blockbilling may alleviate some of these problems, but it connot correct them. True resolution of the problems identified by the Commission requires recovery of the old gas supplies

[17] *Shell Oil Co. v. FPC*, 520 F.2d at 1077.

lost under the existing pricing structure. The availability of these supplies will guarantee an efficient and productive market in which our least expensive gas resources are fully developed and produced.

The current pricing structure for old gas does not establish just and reasonable prices in the context of today's market. Existing old gas prices promote inefficiency in consumption and production by distorting price signals to consumers and producers. This inefficiency, in turn, undermines the competitive forces at work in today's market.

The price signal to the consumer does not represent the resource cost of bringing additional supplies to market. As a result, consumers are purchasing excessive amounts of gas from high-cost sources.[18]

At the same time, producers are not receiving accurate market signals concerning the value of their supplies. Because of the existing price ceilings, consumers cannot offer a price for much of the old gas supply which represents its true value. As a result, much of our least expensive gas will never be produced.[19]

The current old gas pricing structure frustrates the attainment of market equilibrium prices. Market equilibrium prices are most easily attained when customers see the cost consequences of marginal consumption decisions. Similarly, equilibrium is more quickly reached and easily sustained when producers see unambiguous price signals as a consequence of their marginal supply decisions.

Market equilibrium prices and quantities are also severely distorted by the large disparity between the prices of old gas and decontrolled gas. Current equilibrium prices paid by consumers are higher and total domestic production is lower than would be the case if the inefficient price disparity between old gas and decontrolled gas was reduced.

Current old gas pricing encourages depletion of scarce natural resources. Customers are shown a price below the cost of incremental supplies and tehrefore consume greater quantities than they would if they were required to pay a price reflective of that cost. Current old gas pricing permits incremental supplies to receive above-market clearing prices. Thus, production is encouraged in a fashion that promotes wasteful depletion of a valued national resource. The depletion is inarguably wasteful because the cost of these incremental supplies is greater than the value consumers place on the consumption of those supplies. At the same time, as will be discussed in section II–B–2, the current old gas pricing structure inhibits the production of low cost supplies.

B. Incentive Prices

1. Legal Authority

Section 107(b) provides the Commission can increase the ceiling price for "high-cost natural gas" to the extent a higher price is necessary to provide reasonable incentives for the production of such high-cost natural gas. Section 107(c)(5) defines high-cost natural gas to be "produced under such . . . conditions as [the Commission] determines to present extraordinary risks or costs." The Commission already has exercised this authority to establish higher prices for old gas which qualifies as high-cost natural gas by reason of being "production enhancement gas."

As discussed next, there is a significant amount of old gas that will not be produced under the existing pricing structure. While the costs of producing this old gas supply are less than the costs of other gas sources, they are extraordinary because the production of these old gas supplies is economically infeasible in the context of the existing old gas price structure, even with DOE's proposed changes.

2. Old Gas Supply Response

a. *Premature Abandonment.* Twenty-three to 44 Tcf of old gas will never be produced under the existing old gas pricing structure.[20] Based on this range, our best estimate is that about 34 Tcf of old gas will be lost under current regulations. Producers will abandon a well when revenues generated from its operation no longer offset the costs of production. As the well's pressure and production flow decline, revenues will decline over time. Since old gas prices and total operating costs remain relatively constant, revenues will eventually fall below costs. At that point, the well or field will be abandoned. If old gas prices were adjusted upward, producers would continue operation from a well for a longer period of time and ultimately produce more gas from each old gas well. Producers also would have an incentive to rework wells and take other actions to extend the life of wells.

NGPA section 108 allows wells producing less than 60 thousand (Mcf) cubic feet per day to receive an incentive price—currently (November 1985) at $4.43 per Mcf. This incentive price is insufficient, however, because many of the more expensive and productive old gas wells are abandoned *long before they can qualify as stripper gas wells.* In a recent Energy Information Administration (EIA) study of abandoned wells in 39 old gas fields, more than 90 percent of the total production in the year before abandonment was from wells that were abandoned before they qualified as stripper wells.[21] Thus, only 10 percent of the production from abandoned wells was eligible for stripper incentive prices. This premature abandonment results in the loss of over 13 Tcf of old gas reserves, *despite* the stripper incentive provisions under the NGPA.

b. *New Infill Wells.* In addition to encouraging premature abandonment, the existing old gas price structure does not provide any incentives for long-term investments in projects to recover old gas supplies. New infill wells would increase recovery from known reservoirs in existing fields. Infill wells increase recovery of gas from existing fields because they are drilled at a closer spacing than originally planned and recover isolated pockets of gas or gas from low permeability formations.

Currently, there is very little infill drilling occurring in the United States. The future prospects for such drilling are dim. The price is just too low to make such drilling economic. A pricing structure which encouraged new infill wells would increase old gas reserves by about 16 Tcf.

New onshore production wells do qualify for the section 103 price if they obtain approval under state well-spacing requirements. In most instances, the section 103 price is not sufficient to justify the investment in a new well in an existing reservoir even though the investment would be less than sinking a well in an unproven area. For planning purposes, a producer needs assurances that its investment will earn a reasonable rate of return for the life of the investment. While the section 103 price may represent a reasonable return in the near term, there is great uncertainty as to whether it would represent a reasonable return in five years or more.

[18] This distortion will continue under blockbilling, albeit to a somewhat lesser extent.

[19] Blockbilling will do nothing to promote full recovery of our old gas supplies.

[20] DOE, *Increasing Competition in the Natural Gas Market*, January 1985, pp. 133–135, Appendix C. *See* also Office of Technology Assessment, *Effects of Decontrol on Old Gas Recovery*, February 1984; Shell Oil Company, *Increase in U.S. Oil Gas Reserves Due to Deregulation*, April 1983.

[21] EIA, *Drilling and Production Under Title I of Natural Gas Policy Act*, June 1984, p. 109.

c. *Production Enhancement.* The production rates and ultimate recovery of old gas wells also can be increased through such well-stimulation activities as (1) recompletion by reperforation, (2) repair or replacement of casing or other downhole equipment, (3) reentry into a previously plugged well, and (4) fracturing, acidizing, or installation of compression equipment.

On November 13, 1980, the Commission adopted a production-enhancement incentive rule for intrastate natural gas subject to section 105 (old intrastate gas supplies) of the NGPA. On September 26, 1983, the Commission extended the incentive provision to include interstate natural gas subject to NGPA section 104 (old interstate gas supplies) and 106 (old gas subject to rollover contracts). Using its section 107(c)(5) authority to give incentive prices to gas it finds to be "high-cost," the Commission allowed wells using these techniques to receive the section 109 ceiling price.

The existing enhancement rule hampers production-enhancement activity in two ways. First, the purchaser has an absolute veto over whether a producer can apply to FERC to receive a price that will cover the cost of production-enhancement techniques.

Second, the section 109 price ceiling is too low to encourage as much investment in well stimulation as would be justified by the market value of this gas. The section 109 ceiling price will remain at about $2.51 per Mcf in 1985 dollars. The market value of this gas in current dollars is now comparable to the section 109 price but most likely will rise considerably above the section 109 price by 1990.

The inadequacy of the current incentive price rules is demonstrated by the small number of enhancement applications that have been filled with the Commission. From November 13, 1980, to November 2, 1984, the Commission received only 558 and approved 551 applications for production-enhancement incentive prices. Moreover, the Commission's extension of the production-enhancement provision to interstate natural gas in 1983 did not increase well-stimulation activities significantly. The Commission approved only 136 applications in 1984, compared to 111 applications in 1983 and 199 in 1982. Over four Tcf of additional old gas reserves could be recovered if adequate price incentives were available for old gas production enhancement efforts.

C. Benefits of Higher Old Gas Ceiling Prices

1. Higher Old Gas Ceiling Prices Will Not Result in Higher Average Prices

Price controls create an incentive for pipeline companies to purchase a mix of low-cost and high-cost gas. Consumers pay an average of these prices. Price controls on low-cost, old gas allow high-cost domestic and imported gas to receive prices above the average price. The price paid for high-cost gas will exceed the average price by an amount that results in the average price matching the price that consumers are willing to pay for natural gas. The price consumers are willing to pay for gas is equal to the cost of not using gas or the price of alternative fuels. Thus, the major beneficiaries of price controls on old gas are high-cost domestic gas producers and gas importers, *not consumers.*

If price controls are revised to permit producers to negotiate higher old gas prices, competition will allow low-cost, old gas to receive a higher price and will force high-cost gas prices down. *The prices paid by consumers overall will be lower, because low-cost gas production will increase and displace some high-cost domestic and imported gas, thus forcing down the prices of these supplies.* The increase in total gas supply from an increase in the production of old gas reserves will unambiguously result in lower prices to consumers. DOE estimates that full recovery of our old gas supplies will lower average consumer prices by $0.19 to $0.55 per Mcf from June 1985 to 1995.

2. Additional Production of Old Gas Will Provide Economic Benefits Immediately

Much of the potential old gas supply response can be developed quickly through additional infill drilling and well stimulation. Production of this gas will begin immediately once producers are sure they will receive a reasonable return on their investment in the future.

Future increases in old gas production resulting from delayed abandonment will have an immediate effect on decisions to produce other gas reserves. Natural gas is produced over time so as to maximize the value of all gas reserves. If production of old gas reserves increases in future years, the expected future price of gas will decline. Producers react to this change by shifting production of other gas reserves to earlier time periods when relative prices are higher. This adjustment will continue until the increase in production in earlier periods lowers the price in these periods enough that there are no more opportunities to increase the value of gas by producing it sooner.

The additional old gas reserves represent an increase in the total amount of gas that will be produced for as long as gas is widely consumed. An increase of about 34 Tcf in recoverable reserves should increase total production (from both old and new reserves) in each year by about one Tcf. Increased production in each year and a lower cost mix of gas produced reduces consumer prices and provides large economic benefits.

3. Old Gas Production Increases by More Than New Gas Production Declines

Higher ceiling prices for old gas will result in lower prices for new gas (and other higher cost supplies) gas in the short run. As a result, new gas reserve additions will be lower in the short run. *Yet total production will still be higher, because new reserves are not lost forever.* Rather, they are recovered and produced in later years when the market conditions warrant their extraction. In contrast, under the existing pricing structure, while new reserves will be produced more quickly, the old gas reserves will be lost forever. In addition, some of the less costly and less risky new reserves are produced faster as producers recognize that future prices will be lower. Therefore, the producers produce these new reserves faster to maximize the discounted value of these reserves over time.

Finally, production from old gas reserves is much higher in each year, and the production costs of these reserves are less than those of new reserves. Therefore, the economy is able to consume more gas at lower costs.

4. Increased Old Gas Production Means Less Gas and Oil Imports

The existing pricing structure restricts the domestic production of low-cost gas. To meet consumer demand for natural gas, pipeline companies must increase their purchases of high-cost domestic and imported natural gas. These supplies of high-cost gas receive a price that is well above the average price paid by consumers. For example, the average price for section 107 gas in September 1985, was $4.47 per Mcf.

By subsidizing the price of high-cost gas, artificially low old gas prices increase the transfer of economic wealth from the U.S. economy to foreign gas producers. Fuller use of our old gas reserves would remove this subsidy and the prices of high-cost domestic and imported gas would fall. Consumers would pay five to seven billion less for

gas imports from 1985 to 1995 if old gas were consumed in an economically rational basis.

Artificially low old gas prices also increase our consumption of expensive and, in many instances, insecure imports of crude oil and petroleum products. Revision of the existing pricing structure would reduce our dependence on oil imports and our vulnerability to oil supply disruptions by increasing production and consumption of domestic natural gas. From 1985 to 1995, the United States would import an average of 300 to 350 thousand barrels per day *less* oil if America used its least expensive gas first. Assuming $25 per barrel oil, this decrease in imported oil would reduce our balance of payments deficit by $7.5 to 8.8 million a day.

III. Proposal

A. Just and Reasonable Price for Flowing Old Gas

1. Eliminate Vintaging

The proposed rule would simplify the rate structure for "flowing old gas" by eliminating the vintaging of those rates.[22]

The proposed rule would replace the existing myriad of ceiling prices with one maximum lawful ceiling price equal to the highest current ceiling price for old gas (the existing ceiling price for post-1974 gas). This price would escalate as in current law.

2. Good Faith Negotiation Rule

DOE does not believe producers should receive the new ceiling price automatically. Ceiling prices which act as price floors distort the market as much as artificially low ceiling prices. Accordingly, DOE is proposing that the new ceiling price be applicable to gas only to the extent provided for in the contract between the producer and a purchaser. In addition, in the case of contracts in effect at the adoption of the new ceiling price, the producer and purchaser by good faith negotiation must agree as to the extent the contract will operate to increase the price received by the producer.[23] Of course, the producer and purchaser could agree to a price lower than the new ceiling price, and many will in fact do so in markets such as the current market—where many prices are below maximum ceiling prices. In no case could the new price exceed the ceiling price.

DOE does not believe an existing purchaser should possess a veto over new higher just and reasonable prices for old gas where such prices are permitted by the existing contract. The decision whether to establish a new price for old gas should result from good faith negotiation between a producer and a purchaser in the light of current market conditions. Accordingly, DOE is proposing that producers be given a one-time right, exercisable at any time, to request purchasers of gas under a contract in effect on July 1, 1986, to nominate the price the purchaser is willing to pay for the gas. If the purchaser refuses to nominate a price within 60 days of the request, the producer would be free to sell the gas to a new purchaser, subject to the price ceiling, and would be released from all obligations in law and contract to the existing purchaser upon 30 days notice. If the purchaser nominated the highest price permitted by the existing contract, the producer would sell the gas to the purchaser at that price. If the purchaser nominated a price less than the highest price permitted by the contract, the producer would have two options. One, the producer could accept the nominated price and sell the gas to the purchaser at that price. Or the producer could refuse the nominated price and, at anytime, sell the gas to a new purchaser which offered to pay a price higher than the nominated price for a term of at least two years,[24] in which case the producer would be released from all obligations in law and contract to the existing purchaser upon 30 days notice. However, in the interim, the producer would be required to continue to sell the gas to the existing purchaser at the existing contract price. DOE believes this system will require both producers and purchasers to negotiate in good faith.

B. Incentive Prices

The elimination of vintaging will not result in the recovery of all old gas supplies. In many instances, the recovery of additional old gas supplies will require significant investment by producers. While this investment is less than the investment required to recover gas from other sources, the rigidities of the existing price structure make it highly uncertain whether producers will recover a reasonable return on such an investment in the future. Accordingly, DOE believes these investments can qualify as "extraordinary costs."

Certainty concerning a reasonable return throughout the life of a recovery project is especially important with respect to gas from (1) production enhancement projects, (2) new wells, and (3) existing wells with low production. As discussed previously, producers do not have sufficient incentive to invest in these areas under the existing pricing structure, even with the elimination of vintaging. Since investments in production enhancement projects, new wells, and existing wells with low production could yield 4.5 Tcf, 16 Tcf, and 13.5 Tcf of additional old gas supplies, respectively, DOE believes an incentive price under section 107 would be appropriate.

DOE believes an incentive price for old gas recovery projects is necessary because of their long-term nature. While the proposed new ceiling price for old gas might be sufficient to justify operation of an old gas recovery project in today's market, it would not necessarily be sufficient to justify a long-term commitment to such a project. For planning purposes, a producer needs assurances that its investment will earn a reasonable rate of return over the entire life of the project. DOE believes that need for assurance can be met by providing for an incentive price which escalates over time. In addition, an escalating ceiling price is consistent with production schedules where the least expensive old gas is produced first. Accordingly, DOE is proposing an incentive price which escalates from 60 percent of the section 102 price in 1986 to the section 102 price in 1991.

DOE does not believe a producer should receive an incentive price automatically. However, the existing purchaser veto in the production enhancement rule has had a chilling effect. Receipt of an incentive price should result from an agreement between a producer and purchaser. The incentive price should represent a reasonable investment to recover more gas. Therefore, DOE is proposing a producer receives the incentive only upon agreement of a purchaser. To ensure meaningful bargaining between a producer and a purchaser, DOE is also proposing the same good faith negotiation rule described in connection with the proposed new just and reasonable ceiling price.

---

[22] Flowing old gas refers to gas subject to the ceiling prices established by NGPA sections 104 and 106(a). The existing ceiling prices are set forth in Table II of 26 section 271.101(a).

[23] DOE believes the logic of *Pennzoil Co. v. F.E.R.C.*, 645 F.2d 360 (1981) would make the proposed new just and reasonable ceiling, as well as the proposed new incentive prices, applicable to most existing contracts. However, DOE believes both parties, and especially the purchaser, should be given the opportunity to reevaluate whether they wish the contract to continue.

[24] DOE is proposing a two-year term so that producers will not be able to use a spot market price to negate their existing long-term contracts.

1. Production Enhancement

As discussed previously, the existing production enhancement rule has proven to be insufficient to generate this valuable activity. The existing rule, unfortunately, does not establish a high enough ceiling price to permit a producer the opportunity to receive a reasonable return on its investment in the future and creates a purchaser veto over participation. Accordingly, DOE is proposing to revise the rule to replace the current incentive price and purchaser veto with the escalating incentive price and the good faith negotiation rule.

The definition of what constitutes "production enhancement work" need not be changed. The definition of "qualified production enhancement gas," however, would refer only to where and when production enhancement work was undertaken. The other provisions of the existing definition, including the purchaser veto, would be eliminated as unnecessary in light of the proposed good faith negotiation rule. DOE believes that in today's competitive market a higher price will be negotiated only if it is economical to produce the incremental supplies.

2. New Wells

As discussed previously, DOE believes significant amounts of old gas are not being produced because of the lack of sufficient incentives for new infill wells. Therefore, DOE is proposing new wells receive the escalating incentive price, subject to agreement by a purchaser and the good faith negotiation rule.

New infill wells would be defined the same as new onshore production wells in NGPA section 103 except that (1) OCS wells would be included and (2) the qualifying date would be November 18, 1985.

3. Marginal Wells

As discussed previously, DOE believes many old gas wells are being abandoned before they qualify as stripper wells. To provide a transition to stripper well status and thus prevent premature abandonments, DOE is proposing that gas from marginal wells receive the escalating incentive price, subject to agreement by a purchaser and the good faith negotiation rule.

A marginal well would be defined the same as a stripper well in NGPA section 108, except that "120 Mcf per day" would be inserted in lieu of "60 Mcf per day." DOE is proposing 120 Mcf as the level of production at or below which a well qualifies as a marginal well to avoid abandoning prematurely old gas wells and to increase old gas production.

IV. Procedural Requirements

Because the Commission is the agency which will take final action on this proposed rulemaking, DOE believes the Commission is the appropriate agency to comply with the statutory requirements which arise in conection with a rulemaking. To the extent a statute requires action before the issuance of a final rule the Commission should take such action in sufficient time to permit adoption of a final rule on June 1, 1986.

List of Subjects in 18 CFR Part 271

Natural gas.

(The Administrative Procedure Act, 5 U.S.C 551, *et seq.*; the Natural Gas Act, 15 U.S.C. 717, *et seq.*; the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*)

In consideration of the foregoing it is proposed that the Commission amends Part 271 of Chapter I of Title 18 of the Code of Federal Regulations, as set forth below.

Issued in Washington, DC, November 18, 1985.

John S. Herrington,
Secretary of Energy.

PART 271—[AMENDED]

Subpart D—Natural Gas Committed or Dedicated to Interstate Commerce

1. The authority citation for Subpart D of Part 271 continues to read as follows:

Authority: Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301 to 3432; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.

2. Section 271.402 of Subpart D is amended by adding paragraph (c)(7) to read as follows:

§ 271.402 Maximum lawful prices.

* * * * *

(c)* * *

(7)(i) Beginning July 1, 1986, the maximum lawful price for gas to which this subpart applies shall be the maximum lawful price for post-1974 gas to the extent permitted by contract and, in the case of contracts in effect on July 1, 1986, only to the extent the purchaser agrees to a higher price than would be permissible in the absence of this paragraph.

(ii) A producer may request the purchaser of gas under a contract in effect on July 1, 1986, to nominate the price it is willing to pay for gas subject to this paragraph.

(iii) If the existing purchaser does not respond to the producer's request within 60 days, the producer shall continue to sell the gas to that purchaser at the existing contract price; *Provided that*, the producer may agree to sell the gas to a new purchaser and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(iv) If the existing purchaser nominates the highest price permitted under the contract, the producer shall sell the gas to the existing purchaser at the nominated price.

(v) If the existing purchaser nominates a price less than the highest price permitted by the contract, the producer, within 30 days, shall indicate whether:

(A) it accepts the nominated price, in which case the producer shall sell the gas to the existing purchaser at the nominated price; or

(B) it rejects the nominated price, in which case the producer shall continue to sell the gas to the existing purchaser at the existing contract price; *Provided that*, the producer may, at any time, agree to sell the gas to a new purchaser which offers a price higher than the producer shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

Subpart G—Hgh-Cost Natural Gas

3. The authority citation for Subpart G of 271 continues to read as follows:

Authority: Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*; Natural Gas Policy Act of 1978 (15 U.S.C. 3301–3432); Natural Gas Act, as amended (15 U.S.C. 717, *et seq.*;) E.O. 12009, 42 FR 46267.

4. Section 271.704 of Subpart G is revised to read as follows:

§ 271.704 Qualified Production Enhancement Gas.

(a) *Maximum lawful price for qualified production enhancement gas.*

(1) To the extent permitted by contract and, in the case of contracts in effect on July 1, 1986, only to the extent the purchaser agrees to a higher price than would be permissible in the absence of this section, the maximum lawful price for the first sale of qualified production enhancement gas shall be:

(i) Beginning July 1, 1986, 60 percent of the section 102 price;

(ii) Beginning July 1, 1987, 65 percent of the section 102 price;

(iii) Beginning July 1, 1988, 70 percent of the section 102 price;

(iv) Beginning July 1, 1989, 80 percent of the section 102 price;

(v) Beginning July 1, 1990, 90 percent of the section 102 price; and

(vi) Beginning July 1, 1991, the section 102 price.

(2) *Requirement of completed production enhancement work.* If the production enhancement work has not been completed on or before the date the application is filed, the maximum lawful price provided in paragraph (a)(1) of this section shall not apply until the production enhancement work is completed and the seller has given written notice to the purchaser stating that the production enhancement work upon which the application for determination of eligibility is based, has been completed. The applicant must retain a copy of this notice in his records for a period of three years after the month in which the first sales priced under this section occurred.

(3) *Elimination of price controls.* For purposes of determining the price paid, under section 121(a)(3) of the NGPA, any amount paid solely by reason of a maximum lawful price allowed by this section shall be disregarded.

(b) *Negotiation of Price*

(1) A producer may request the purchaser of gas under a contract in effect on July 1, 1986, to nominate the price it is willing to pay for gas subject to this section

(2) If the existing purchaser does not respond to the producer's request within 60 days, the producer shall continue to sell gas to that purchaser at the existing contract price; *Provided that,* the producer may agree to sell the gas to a new purchaser and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(3) If the existing purchaser nominates the highest price permitted under the contract, the producer shall sell the gas to the existing purchaser at the nominated price.

(4) If the existing purchaser nominates a price less than the highest price permitted by the contract, the producer, within 30 days, shall indicate whether:

(i) It accepts the nominated price, in which case the producer shall sell the gas to the existing purchaser at the nominated price; or

(ii) It rejects the nominated price, in which case the producer shall continue to sell the gas to the existing purchaser at the existing contract price; *Provided that,* the producer may, at any time, agree to sell the gas to a new purchaser which offers a price higher than the nominated price, for a term of at least two years, and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(c) *Definitions.* For purposes of this subpart:

(1) "Qualified production enhancement gas" means natural gas that a jurisdictional agency has determined in accordance with Parts 274 and 275 meets the qualification requirements in paragraph (d) of this section.

(2) "Production enhancement work" means an operation or installation of equipment described in paragraph (e) of this section.

(3) "Section 102 price" means the maximum lawful price specified for Subpart I of Part 271 in Table I of §271.101(a).

(d) *Qualified production enhancement gas.* For purposes of this section, qualified production enhancement gas is natural gas which is produced:

(1) From a well on which production enhancement work (other than production enhancement work described in paragraph (e)(3) of this section) was commenced on or after November 18, 1985; or

(2) From a zone that is perforated in accordance with paragraph (e)(3) of this section on or after November 18, 1985;

(e) *Production enhancement work defined.* For purposes of this section "production enhancement work" means any work that is performed for one or more of the following purposes:

(1) Reentry into a well which has been plugged and abandoned.

(2) Reentry into a well for the purpose of deeper drilling, or sidetracing, to a different completion location.

(3) Recompletion by reperforation of a zone from which natural gas has been produced or by perforation of a different zone.

(4) Repair or replacement of faulty or damaged casing, tubing or related downhold equipment.

(5) Fracturing, acidizing or the installing of compression equipment.

(6) Installing equipment necessary for removal of excessive water, brine or condensate from the wellbore in order to establish, continue or increase production of gas from the well.

(7) Workover operations to reduce excessive water or brine production in order to establish, continue or increase production of gas from the well.

(8) Operations to dispose of water or brine produced from the well, the presence of which prevents or severely limits gas production from the well.

(9) Workover operations to reduce excessive sand production or operations to remove excessive sand from wellbore in order to continue production of gas from the well.

(10) Injection of nitrogen gas or other inert gas necessary to establish, continue or increase production of gas from the reservoir.

(f) *Cross reference.* For the rule establishing the maximum lawful price for qualified production enhancement gas which becomes subject to an intrastate rollover contract, see § 271.602(c).

5. Subpart G is further amended by adding two new §§ 271.705 and 271.706 to read as follows:

§ 271.705 Qualified Infill Well Gas.

(a) *Maximum lawful price for qualified infill well gas.*

To the extent permitted by contract and, in the case of contracts in effect on July 1, 1986, only to the extent the purchaser agrees to a higher price than would be permissible in the absence of this section, the maximum lawful price for the first sale of qualified infill well gas shall be:

(1) Beginning July 1, 1986, 60 percent of the section 102 price;

(2) Beginning July 1, 1987, 65 percent of the section 102 price;

(3) Beginning July 1, 1988, 70 percent of the section 102 price;

(4) Beginning July 1, 1989, 80 percent of the section 102 price;

(5) Beginning July 1, 1990, 90 percent of the section 102 price; and

(6) Beginning July 1, 1991, the section 102 price.

(b) *Negotiation of Price.*

(1) A producer may request the purchaser of gas under a contract in effect on July 1, 1986, to nominate the price it is willing to pay for gas to which this section would be applicable if the producer and purchaser so agree.

(2) If the existing purchaser does not respond to the producer's request within 60 days, the producer shall continue to sell gas to that purchaser at the existing contract price; *Provided that,* the producer may agree to sell the gas to a new purchaser and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(3) If the existing purchaser nominates the highest price permitted under the contract, the producer shall sell the gas to the existing purchaser at the nominated price.

(4) If the existing purchaser nominates a price less than the highest price permitted under the contract, the producer, within 30 days, shall indicate whether:

(i) It accepts the nominated price, in which case the producer shall sell gas to the existing purchaser at the nominated price; or

(ii) It rejects the nominated price, in which case the producer shall continue to sell gas to the existing purchaser at the existing contract price; *Provided*

that, the producer may, at any time, agree to sell the gas to a new purchaser which offer a price higher than the nominated price, for a term of at least two years, and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(c) *Definitions.* For purposes of this subpart:

(1) "New Well" means any well:

(i) The surface drilling of which began on or after November 18, 1985;

(ii) Which satisfies applicable Federal or State well-spacing requirements, if any; and

(iii) Which is not within a proration unit—

(A) Which was in existence at the time the surface drilling of such well began;

(B) Which was applicable to the reservoir from which such natural gas is produced; and

(C) Which applied to a well

(*1*) Which produced natural gas in commercial quantities; or

(*2*) The surface drilling of which was begun before January 1, 1985, and which was thereafter capable of producing natural gas in commerical quantities.

(2) "Qualified infill well gas" means natural gas produced from a well that a jurisdictional agency has determined in accordance with Parts 274 and 275 meets the definition of new well.

(3) "Section 102 price" means the maximum lawful price specified for Subpart I or Part 271 in Table I of § 271.101(a).

§ 271.706 Qualified Marginal Well Gas.

(a) *Maximum lawful price for marginal well gas.*

To the extent permitted by contract and, in the case of contracts in effect on July 1, 1986, only to the extent the purchaser agrees to a price higher than would be permissible in the absence of this section, the maximum lawful price for the first sale of qualified production enhancement gas shall be:

(1) Beginning July 1, 1986, 60 percent of the section 102 price;

(2) Beginning July 1, 1987, 65 percent of the section 102 price;

(3) Beginning July 1, 1988, 70 percent of the section 102 price;

(4) Beginning July 1, 1989, 80 percent of the section 102 price;

(5) Beginning July 1, 1990, 90 percent of the section 102 price; and

(6) Beginning July 1, 1991, the section 102 price.

(b) *Negotiation of Price.*

(1) A producer may request the purchaser of gas under the contract in effect on July 1, 1986, to nominate the price it is willing to pay for gas to which this section would be applicable if the producer and purchaser so agree.

(2) If the existing purchaser does not respond to the producer's request within 60 days, the producer shall continue to sell gas to that pruchaser at the existing contract price; *Provided that*, the producer may agree to sell the gas to a new purchaser and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(3) If the existing purchaser nominates the highest price permitted under the contract, the producer shall sell the gas to the existing purchaser at the nominated price.

(4) If the existing purchaser nominates less than the highest price permitted by the contract, a price, the producer, within 30 days, shall indicate whether:

(i) It accepts the nominated price, in which case the producer shall sell gas to the existing purchaser at the nominated price; or

(ii) It rejects the nominated price, in which case the producer shall continue to sell gas to the existing purchaser at the existing contract price; *Provided that*, the producer may, at any time, agree to sell the gas to a new purchaser which offers a price higher than the nominated price, for a term of at least two years and shall be released from all obligations in law and contract to the existing purchaser upon 30 days notice.

(c) *Definitons.* For purposes of this subpart:

(1) "Qualified marginal well gas" means natural gas produced from a well that a jurisdictional agency has determined in accordance with Parts 274 and 275 meets the qualification requirements in paragraph (d) of this section.

(2) "Section 102 price" means the maximum lawful price specified for Subpart I of Part 271 in Table I of § 271.101(a).

(d) *Definition of Marginal Well—*

(1) General Rule.—A well qualifies as a marginal well if—

(i) During the preceding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 120 Mcf per production day during such period; and

(ii) During such period such well produced at its maximum efficient rate of flow, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas.

(2) Definitions.—For purposes of this subsection—

(i) Production Day.—The term "production day" means—

(A) Any day during which natural gas is produced; and

(B) Any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

(ii) 90-day Production Period.—The term "90-day production period" means any period of 90 consecutive calendar days excluding any day during which natural gas is not produced for reasons other than voluntary action of any person with the right to control production of natural gas from such well.

(iii) Nonassociated Natural Gas.—The term "nonassociated natural gas" means natural gas which is not produced in association with crude oil.

[FR Doc. 85-27964 Filed 11-22-85; 8:45 am]

BILLING CODE 6450-01-M

Reader Aids

Federal Register

Vol. 50, No. 227

Monday, November 25, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

45591-45804.....1
45805-45900.....4
45901-45984.....5
45985-46278.....6
46279-46414.....7
46415-46626.....8
46627-46736.....12
46737-47026.....13
47027-47200.....14
47201-47354.....15
47355-47520.....18
47521-47702.....19
47703-48072.....20
48073-48160.....21
48161-48370.....22
48371-48548.....25

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
4907 (See EO 12538).....47527
5141 (See EO 12538).....47527
5402.....45591
5403.....45593
5404.....46279
5405.....46737
5406.....47027
5407.....47029
5408.....47201
5409.....47203
5410.....47521
5411.....47523
5412.....47525
Executive Orders:
12170 (See Notice of November 1, 1985).....45901
12538.....47527
Administrative Orders:
Notices:
November 1, 1985.....45901
Memorandums:
November 5, 1985.....47198
Presidential Determinations:
No. 86-2 of October 29, 1985.....48073

5 CFR

Proposed Rules:
530.....47057-47059
550.....48421
630.....47060

7 CFR

6.....47703, 47704
27.....47706
29.....45805, 45806
301.....48161
371.....47205
404.....45903
405.....45903
408.....45903
420.....48162, 48168
421.....48168
424.....48168
425.....48168
432.....48168, 48169
438.....48168
442.....45903
448.....48168
907.....48174
981.....47707
982.....48371
999.....45807
1002.....45595
1004.....45595
1032.....46627
1468.....47031
1530.....47703, 47704
1736.....47709, 47713
1772.....46628
1864.....45740
1872.....45740
1900.....45740, 45906
1910.....45740
1924.....45740
1941.....45740
1943.....45740
1944.....48372
1945.....45740, 48175
1950.....45740
1951.....45740
1955.....45740
1960.....45740
1962.....45740
1965.....46415
1980.....46415
3015.....47034
Proposed Rules:
51.....47551
70.....45829, 48220
225.....45898
318.....47551
400.....45625
426.....46772
928.....46773
945.....47226
978.....48422
989.....45627
1007.....46441
1421.....48094

8 CFR

100.....45597
212.....47035
287.....47205
316a.....47355
Proposed Rules:
204.....46441

9 CFR

51.....47035
71.....45985
78.....45808, 45985
85.....47346
97.....47529
112.....46416
318.....48075
Proposed Rules:
51.....46077
75.....46079
92.....45918
94.....46443
145.....47555
147.....47555
307.....47060
317.....48096
318.....47060, 48096
319.....48097
381.....47060, 48096

10 CFR

Ch. I.....45597, 47355
2.....47716
20.....46630
21.....46630
73.....46630
903.....48075
Proposed Rules:
Ch. I.....46672
19.....45628
21.....45628
30.....45628
40.....45628
50.....45628
70.....45628, 48220
71.....45628
72.....48220
73.....45628, 48220
74.....48220
110.....45628
962.....45736, 47409
1046.....46672

11 CFR

Proposed Rules:
7.....47752

12 CFR

Ch. VIII.....48372
202.....48018
202a.....48018
227.....47036
265.....45809
561.....46739
563.....45988, 46739
591.....46744
611.....46417, 47043
614.....47043
615.....46418
701.....48075
724.....48176
Proposed Rules:
210.....47752
225.....47754
353.....47409

13 CFR

121.....46418
309.....46749
Proposed Rules:
122.....47227

14 CFR

21.....46872, 48077
23.....46872, 48077
39.....45598, 45810, 46631, 46750, 47356, 48375, 48376
71.....45718, 45810, 45989, 46281, 46751, 46753, 47044–47046, 47358–47361, 48077, 48178, 48378
73.....47361, 47363
75.....47047
91.....45599, 46872, 48077
97.....46421, 48179
Proposed Rules:
Ch. I.....47757
39.....45829, 46444, 46775–46777, 47409, 47411
71.....45830, 46447–46452, 47061, 47062, 48220
75.....47062
139.....46673
241.....47063

15 CFR

371.....47363
373.....47363
379.....47363
385.....47363
386.....47363
399.....47363
923.....46422
930.....46422
Proposed Rules:
981.....48097

16 CFR

13.....45990, 46423, 46753, 46757
803.....46633
Proposed Rules:
13.....46453, 47063
259.....46300
444.....46082
453.....46266–46271
1500.....46300

17 CFR

33.....45811
140.....47530, 47531
200.....45602, 45990, 48379
210.....48379
230.....48379
239.....48379
240.....48180, 48379
249.....46281
275.....46281
Proposed Rules:
1.....45831, 46674
33.....45831, 46674
145.....45833
146.....45833
190.....45831, 46674
240.....46731

18 CFR

2.....45907
157.....45907
250.....45907
271.....46758
282.....47532
284.....45907–45908, 46424
375.....45907, 47532, 48181
385.....48181
Proposed Rules:
1b.....47556
154.....48221
271.....48540

19 CFR

12.....47206
175.....45812
Proposed Rules:
175.....48430
191.....45919

20 CFR

416.....46760
Proposed Rules:
404.....47758
416.....46778

21 CFR

5.....47207
73.....45814, 45991, 47532
74.....45909
81.....45909
82.....45909
107.....48078, 48183
172.....47367
175.....47208
176.....47208, 47209
177.....47210
178.....47211, 47212
189.....47367
310.....46582
430.....47212, 48396
436.....45603, 47212, 48396
440.....47367
442.....48078, 48396
444.....47212
446.....47212
450.....47212
452.....47212
455.....47212
510.....48188
520.....47725, 48188
522.....45603
558.....45910, 46282, 47048, 47367, 48189
1020.....46646
1308.....45815
Proposed Rules:
201.....47558
343.....46588
355.....46303
357.....46594
730.....47760
864.....48058
870.....48156

22 CFR

41.....47048
151.....47214
Proposed Rules:
41.....46085
42.....46085
60.....46555
61.....46555
62.....46555
63.....46555
64.....46555
65.....46555

23 CFR

635.....46282
658.....46425
1204.....45815
Proposed Rules:
658.....48431

24 CFR

20.....45910
27.....48190
201.....45993
203.....45993
232.....47726
234.....45993
242.....47726
251.....46763
990.....47368

25 CFR

61.....46427

26 CFR

1.....45996, 46004, 46006
5.....45996
5h.....45996
602.....45996, 46004, 46006
Proposed Rules:
1.....46086–46088, 46303, 46306, 46460, 46674
20.....46460
25.....46460
53.....46460
301.....47563
602.....46088, 46460

27 CFR

9.....48078, 48083
47.....46647

28 CFR

2.....46282
17.....46388
570.....48336
Proposed Rules:
522.....48338
524.....48338
544.....48338
550.....48338

29 CFR

Proposed Rules:
541.....47696
1910.....48222
1953.....46460, 46462

30 CFR

256.....47377
906.....47215
916.....47216
917.....47727, 47728
920.....47379
925.....47218
926.....47386
938.....45820
946.....47388
Proposed Rules:
56.....47700
57.....47700
75.....47702
914.....47228
938.....47230
943.....47231, 47232
944.....47233

31 CFR

103.....46283, 47390
355.....46284
545.....46726

32 CFR

78.....47219
518.....47730
644.....47731
706.....46435, 48085
883.....47048

33 CFR

100.....48086, 48402
117.....46647, 47390
165.....46284, 48403, 48404
Proposed Rules:
117.....46674, 48099
165.....46780, 48434

34 CFR

778.....48190
Proposed Rules:
500.....48352
501.....48352
505.....48352
510.....48352
514.....48352
525.....48352

526 48352
537 48352
561 48352
573 48352
574 48352
614 46675

36 CFR

254 45823
327 46284
902 ..... 45823, 45824
903 45824
905 45824
907 45824
908 45824

Proposed Rules:

903 45841

38 CFR

21 46763
36 48406

Proposed Rules:

21 ..... 45629, 47066

39 CFR

Proposed Rules:

10 ..... 46307, 46463
111 ..... 47564, 48087
265 47068
310 46464
320 46464

40 CFR

35 ..... 45892, 46648
52 ..... 45603, 45606, 46041, 47731
60 ..... 46042, 47732
61 ..... 46042, 46284
62 47734
81 ..... 46436, 46649, 46650, 47735
141 ..... 46880, 47142
158 46764
162 46764
180 ..... 45607, 46043
256 47049
271 ..... 46437, 47736, 47740, 48406
280 46602
300 47912
704 47534
712 47538
716 ..... 46295, 47538
717 46766
721 47534

Proposed Rules:

Ch. I 48100
52 ..... 45630, 46782, 47069, 47234, 47235
60 46464
65 46307
81 ..... 45630, 46089
131 48102
141 ..... 46902, 46936, 47025, 47156
142 ..... 46902, 47156
143 47156
147 47761
180 ..... 46103, 47761
261 ..... 46468, 47763
264 47236
265 47236
271 ..... 46734, 47073, 47566, 47567
302 46468
435 46784
439 45920
440 47982
704 ..... 46090, 46309
716 ..... 46104, 46309, 47765
796 46785
797 48102
798 ..... 46104, 46121
799 ..... 46909, 46104, 46121, 46133, 46785, 47569, 48102

42 CFR

412 46651
432 46652
433 46652
435 46652
436 46652

Proposed Rules:

405 48435
435 48102
436 48102
442 45921

43 CFR

4 47222
403 47049
416 47050
1820 46044
2780 46770
4100 45824

Proposed Rules:

4 ..... 47237, 48445, 48446
7 47073

44 CFR

64 ..... 46297, 47540
65 46044
67 46045

Proposed Rules:

67 46143

45 CFR

801 45608

46 CFR

Proposed Rules:

67 47411
172 ..... 46315, 47238

47 CFR

0 47050
1 ..... 45608, 47051
2 47050
13 45827
18 47050
21 47051
31 48408
33 48408
42 48408
43 48408
61 47741
63 48191
67 47746
68 ..... 47543, 48203
73 ..... 46047, 47051, 47055, 47391, 47408, 48089-48093
90 ..... 46048, 47748
97 46048

Proposed Rules:

Ch. I 45841
2 48229
15 ..... 45843, 47412
18 46144
21 45608
22 45843
67 ..... 47765, 47774
73 ..... 47076, 47784, 48106, 48230, 48446
76 ..... 45843, 47412, 48232, 48235
87 47080

48 CFR

Ch. 24 46572
319 46298

Proposed Rules:

31 ..... 45708, 46470
47 48332
52 48332
231 47784
235 46796
532 48447
552 48447

49 CFR

Ch. V 46666
1 49614,45728
106 45728
107 45728
171 ..... 45728, 48419
172 ..... 45728, 46053, 48419
173 ..... 45728, 46053-46054, 48419
174 ..... 45728, 46053
175 ..... 45728, 48419
176 ..... 45728, 46053
177 45728
178 45728
190 45728
191 45728
192 45728
193 45728
195 45728
571 46056
1002 47224
1033 48211
1144 ..... 46066, 47055
1241 47749

Proposed Rules:

192 45845
212 45917
217 45917
218 45917
219 45917
225 45917
571 46144
574 48107

50 CFR

23 48212
17 45614-45621
204 46068
285 45828
604 47225
650 46069
652 ..... 46072, 46671, 47225
663 45828
671 47549
675 46072

Proposed Rules:

Ch. II 48236
17 ..... 45632-45638, 45846, 46320, 46797
611 ..... 47080, 48236
652 46145
672 ..... 47080, 48236
675 ..... 47080, 48236
681 48108

LIST OF PUBLIC LAWS

Last List November 20, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2409/Pub. L. 99-158

Health Research Extension Act of 1985 (Passed over veto, Nov. 20, 1985; 99 Stat. 820; 67 pages) Price: $1.50

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	18.00	Oct. 1, 1985
1200-End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
900-999	14.00	Jan. 1, 1985
1000-1059	12.00	Jan. 1, 1985
1060-1119	9.50	Jan. 1, 1985
1120-1199	8.00	Jan. 1, 1985
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.50	Jan. 1, 1985
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1985
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	8.00	Jan. 1, 1985
200-299	14.00	Jan. 1, 1985
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	16.00	Jan. 1, 1985
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1985
200-1199	15.00	Jan. 1, 1985
1200-End	8.00	Jan. 1, 1985
15 Parts:		
0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	20.00	Apr. 1, 1985
240-End	14.00	Apr. 1, 1985
18 Parts:		
1-149	12.00	Apr. 1, 1985
150-399	19.00	Apr. 1, 1985
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	18.00	Apr. 1, 1985
21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
300-499	20.00	Apr. 1, 1985
500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0-199	11.00	Apr. 1, 1985
200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	13.00	Apr. 1, 1985
1700-End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0-1.169	21.00	Apr. 1, 1985
§§ 1.170-1.300	12.00	Apr. 1, 1985
§§ 1.301-1.400	7.50	Apr. 1, 1985
§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	22.00	Apr. 1, 1985
§§ 1.1201-End	22.00	Apr. 1, 1985
2-29	15.00	Apr. 1, 1985
30-39	9.50	Apr. 1, 1985
40-299	18.00	Apr. 1, 1985
300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	18.00	Apr. 1, 1985
200-End	13.00	Apr. 1, 1985
28	16.00	July 1, 1985
29 Parts:		
0-99	11.00	July 1, 1985
100-499	5.00	July 1, 1985
500-899	19.00	July 1, 1985
900-1899	7.00	July 1, 1985
1900-1910	21.00	July 1, 1985
1911-1919	5.50	[3] July 1, 1984
1920-End	20.00	July 1, 1985
30 Parts:		
0-199	16.00	July 1, 1985
200-699	6.00	July 1, 1985
700-End	13.00	July 1, 1985
31 Parts:		
0-199	8.50	July 1, 1985
200-End	11.00	July 1, 1985

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	13.00	July 1, 1985
190–399	16.00	July 1, 1985
400–629	15.00	July 1, 1985
630–699	12.00	[3] July 1, 1984
700–799	15.00	July 1, 1985
800–999	7.50	July 1, 1985
1000–End	5.50	July 1, 1985
33 Parts:		
1–199	20.00	July 1, 1985
200–End	14.00	July 1, 1985
34 Parts:		
1–299	15.00	July 1, 1985
300–399	8.50	July 1, 1985
400–End	18.00	July 1, 1985
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	14.00	July 1, 1985
37	9.00	July 1, 1985
38 Parts:		
0–17	16.00	July 1, 1985
18–End	11.00	July 1, 1985
39	9.50	July 1, 1985
40 Parts:		
1–51	16.00	July 1, 1985
52	21.00	July 1, 1985
53–80	23.00	July 1, 1985
81–99	18.00	July 1, 1985
100–149	18.00	July 1, 1985
150–189	13.00	July 1, 1985
190–399	19.00	July 1, 1985
400–424	14.00	July 1, 1985
425–699	13.00	July 1, 1985
700–End	8.00	July 1, 1985
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
10–17	9.50	[5] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[5] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[5] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[5] July 1, 1984
19–100	13.00	[5] July 1, 1984
1–100	7.50	July 1, 1985
101	19.00	July 1, 1985
102–200	8.50	July 1, 1985
201–End	5.50	July 1, 1985
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	7.00	Oct. 1, 1985
400–End	18.00	Oct. 1, 1984
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
*4000–End	8.50	Oct. 1, 1985
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
*70–89	5.50	Oct. 1, 1985
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

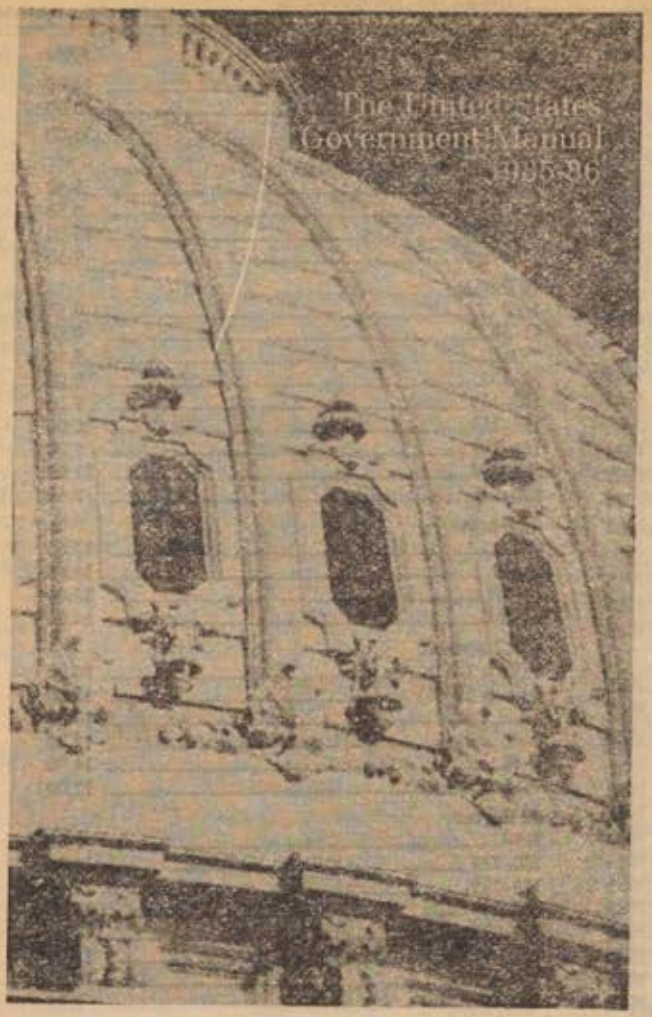
[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



Order Now!

The United States Government Manual 1985/86

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$15.00 per copy

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $ _____

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone Nos.

Area Code Home | Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1985/1986 at $15.00 per copy. Stock No. 022-003-01118-8

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev.9-1-85)